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UNDETERMINED ISSUES IN RAILROAD VALUATION UNDER THE O'FALLON DECISION

THE decision of the United States Supreme Court in the valuation case commonly referred to as "The O'Fallon"[1] made it clear that the railroad common carriers are entitled to have their property valued according to "all of the elements of value recognized by the law of the land for rate-making purposes" and that a valuation order which disregards present costs of reproduction will be annulled as contrary to the delegated authority of the Interstate Commerce Commission. The O'Fallon decision left for the future many mooted questions as to what are "the elements of value recognized by the law of the land for rate-making purposes", how those elements and principles are to be applied to railroad property, and particularly what weight and effect must be given by the Commission to current reproduction costs and to what extent other factors may be deemed by the Commission to offset them or neutralize their effect. In other words, The O'Fallon decision cleared away the procedural and other obstacles to the right of the carriers to insist upon the valuation of their properties, for recapture of excess earnings or for rate-making, according to "the law of the land" as established in the public utility cases so far as applicable; but the present decision left to the future nearly all of the vital and controverted issues as to what this valuation should be and how it should be reached,

[1] *St. Louis & O'Fallon Railway Co. et al. v. United States,* —— U. S. ——; decided May 20, 1929.

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so long as it gives actual and substantial weight and effect to wages, prices, construction costs, etc., prevailing at the time of the inquiry. Major issues of law and proof are still ahead.

Some of the economic dimensions of this controversy may be indicated by the following *approximate* figures, as of December 31, 1925:

(1)	Par value of railroad securities in the hands of the public	$18,000,000,000
(2)	Original cost of railroad property as estimated by Interstate Commerce Commission	$23,000,000,000
(3)	Original cost as estimated by carriers	$28,000,000,000
(4)	Investment in road and equipment	$23,000,000,000
(5)	Cost of reproduction at 1925 prices	$46,000,000,000
(6)	Net income (1926)	$1,200,000,000
(7)	Return earned on (2) above	5.2 per cent
(8)	Return earned on (5) above	2.6 per cent

The steam railroads of the United States have about 1,700,000 employees and, since 1920, have invested about $600,000,000 in improvements each year. They handle 475 billion ton-miles of freight per year. Every fabric of the industrial, commercial and social life of the nation is most vitally affected by every issue which concerns these carriers, their continued capacity for service, and the rates which they charge the public.

Under such circumstances, there has inevitably been widespread interest in The O'Fallon decision, and that interest has increased rather than diminished during the months which have followed the filing of it on May 20, 1929. Many misapprehensions as to the scope of the decision have gained currency and have had extensive effects upon business conditions as well as upon individual investments.

The O'Fallon Case

It is characteristic of the American system of judicature that so momentous a controversy, affecting our whole economic structure, should be presented and determined in a cause involving a railroad with less than nine miles of main line track, constructed thirty years and more ago, and carrying on operations only on the smallest scale. The Commission tendered,

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and the carriers accepted, this case as presenting a basic question as to the Commission's powers and duties in making valuations, and the case was elaborately briefed and argued on all sides. The decision was by a vote of five to three. The majority opinion was written by Mr. Justice McReynolds, with whom concurred Chief Justice Taft and Associate Justices Van Devanter, Sutherland and Sanford. Mr. Justice Brandeis and Mr. Justice Stone wrote dissenting opinions; each concurred in the other's opinion; and Mr. Justice Holmes joined in each of the dissenting opinions. In these minority opinions, many of the future battle-grounds of the law of valuation are prophetically sketched.

Analysis of the Majority Opinion

The majority opinion proceeds on clear-cut and simple propositions, assuming, as we must, that the facts before the Court called for their application:

> The Interstate Commerce Commission is an agency created by the Congress.
>
> In performing any duty delegated to it by the Congress, the Commission must act according to the authority so delegated.
>
> If the Commission did not do so in valuing the property of The O'Fallon, "the action taken, being beyond the authority granted, was invalid."
>
> "Whether the Commission acted as directed by Congress was the fundamental question presented."

The Court cut through or brushed aside several technical considerations, in order to reach the heart of the matter and render a ruling on the issue which, in common sense, was fairly involved in the controversy. It had been urged:

> That the cause was not properly before the Supreme Court for direct review, under the Judicial Code as amended by the Act of February 13, 1925 (U. S. C., Title 28, Sec. 345).
>
> That there was nothing reviewable by the Supreme Court because no question of confiscation or of constitutional law was involved.

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> That it was unnecessary to determine whether or not the Commission obeyed the statutory mandate to it, inasmuch as its order permitted The O'Fallon to retain an income great enough, in any event, to negative any charge of denial of constitutional right or infliction of actual confiscation.

The majority insisted that as "the only power to make any recapture order arose from the statute", the order must be annulled if made in disregard of the statutory direction, irrespective of the effect upon the particular carrier.

The present decision seems therefore to have considered the valuation of the railroad properties in terms of statutory construction; but the constitutional right has been to an extent defined. The constitutional right to the use and enjoyment of property devoted to a public use includes the right to earn a fair return upon the present value of such property, ascertained according to "the law of the land", as declared in decisions in which the constitutional right of public utility properties to protection against confiscation has been litigated and upheld. Present value is not a matter of statutory definition; it inheres in the constitutional right. The statutory provision embraced the constitutional feature in rate-making.

The O'Fallon case arose under Section 15a, the so-called "recapture" section, of the Interstate Commerce Act. The order of the Commission required the carrier to place in a "reserve fund" half of the sum by which its net railway operating revenue for each of the years 1920 (ten months), 1921 1922 and 1923 exceeded six per cent of the ascertained value of the property devoted by it to the public service. The Commission had made a valuation of the property of The O'Fallon under Section 19a of the Interstate Commerce Act, and Section 15a authorized and required the Commission, in a recapture proceeding under Section 15a, to use "the results of its investigation" under Section 19a and any "value so ascertained."

Section 15a further contained the specific mandate that the Commission—

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> *shall give due consideration to all of the elements of value recognized by the law of the land* for rate-making purposes, and shall give to the *property investment* account of the carriers *only that consideration* which *under such law* it is entitled to *in establishing values for rate-making purposes.*

The majority of the Court therefore deemed that the only authority of the Commission to value carrier property at all commanded the Commission to value it according to "the law of the land for rate-making purposes" and to give to the property investment accounts *only* such weight as they would be entitled to under general valuation principles as established in rate litigation.

Limitations of the Majority Ruling

This concept brought "the fundamental question" "whether the Commission acted as directed by Congress". It led to the *negative* conclusion that the Commission *had not* valued The O'Fallon property according to "the law of the land for rate-making purposes", but it did not lead the majority to discuss the metes and bounds of valuation according to "the law of the land" or the extent of the weight or probative force which it requires shall be given to the evidence of current reproduction costs, in the case of The O'Fallon or by general rule. "The weight to be accorded thereto is not the matter before us."

The exigencies of the present case were deemed by the majority to make it unnecessary for the Court to go further than a reiteration of its previous rulings that "the present cost of construction or reproduction" is *among* "the elements of value recognized by the law of the land for rate-making purposes", as "have been pointed out many times by this Court." When seeking to ascertain the value of railroad property, the Commission must "give consideration to current, or reproduction, costs" *for the reason* that the "Congress has directed that values shall be fixed upon a consideration of present costs along with all other pertinent facts, and this mandate must be obeyed."

The previous decisions to which the Court referred as pointing out "the elements of value recognized by the law of the

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land for rate-making purposes" are: *Smyth v. Ames*, 169 U. S. 466; *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19; *Minnesota Rate Cases*, 230 U. S. 352; *Southwestern Bell Telephone Co. v. Public Service Commission*, 262 U. S. 276; *Bluefield Water Works & Improvement Co. v. Public Service Commission*, 262 U. S. 679; *McCardle v. Indianapolis Water Co.*, 272 U. S. 400. The Court particularly quotes from its opinion in the *Southwestern Bell Telephone Company* case (p. 287):

> It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values made upon a view of all the relevant circumstances, is essential. If the highly important element of present costs is wholly disregarded such a forecast becomes impossible. Estimates for tomorrow cannot ignore prices of today.

The Court adds that "the doctrine above stated has been consistently adhered to by this Court"; for failure to follow it, the order of the Interstate Commerce Commission is annulled, on the ground that an agency of the Congress has refused to abide its only statutory authority. "Unfortunately", says Mr. Justice McReynolds for the majority of the Court, "proper heed was denied the timely admonition of the minority" in the Commission, which he quotes as follows: "The function of this Commission is not to act as an arbiter in economics, but as an agency of Congress, to apply the law of the land to facts developed of record in matters committed by Congress to our jurisdiction."

Grounds for Concluding that the Commission Gave No Weight to Present Wages and Costs

Significance attaches to the grounds on which the majority reaches the conclusion that the Commission did not in fact give any weight or effect to present costs of reproducing the carrier property. As to the report of the Commission, Mr. Justice McReynolds points out that:

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> Many objections are urged to doctrines approved by us . . .
>
> The superiority of another view is stoutly asserted . . .
>
> It carefully refrains from stating that any consideration whatever was given to present or reproduction costs in estimating the value of the carrier's property . . .
>
> Four dissenting Commissioners declare that reproduction costs were not considered . . .
>
> Two of the majority avow a like understanding of the course pursued . . .
>
> The report itself confirms [the view of these minority and majority commissioners].

The basic consideration was no doubt the common realization that *in fact* the majority of the Commission had not given any calculable weight or effect to present wages, prices of materials, construction costs, etc., and had in fact given to the property investment accounts an exclusive or dominant weight contrary to the weight which may be accorded to that factor under "the law of the land" as declared in the cases cited by Mr. Justice McReynolds. The O'Fallon had not contended, for purposes of the present case, that the value of its property must be fixed at present reproduction cost new.

The Minority Contention as to the Scope of Judicial Review

The greater significance of The O'Fallon decision lies not so much in the precise points passed on by the majority as necessary for the decision of the instant case, but rather in *the contentions which the majority of the Court refused to uphold*, as embodied in the minority opinions. The full force and significance of what the majority did decide may best be comprehended by appraising the consequences of a contrary decision and a sustaining of the minority contentions.

The minority in the Court asserted that the majority in the Commission had "considered" present reproduction costs in valuing the carrier's property, but hardly ventured the assertion that weight or effect had been given to present costs, in reaching the figures stated as present value. The contention of the minority in the Court seems rather to be that it is no function of the Court to review and determine what weight, or what ex-

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tent of effect, shall be accorded to present reproduction cost by the Commission, and even that the Court is in no position to say whether or not other factors affecting value have reasonably outweighed present wages, prices, etc., in the ascertainment of present value. On this point, Mr. Justice Stone said (Mr. Justice Holmes and Mr. Justice Brandeis concurring):

> After stating that it had before it the evidence above outlined, including that of reproduction cost, and such other matters as the carrier desired to bring to its attention, the Commission added, "From this accumulated information we have formed our judgment as to the fair basic single sum values, not by the use of any formula, but after consideration of all relevant facts." That the Commission gave consideration to present reproduction costs appears not only from its own statement, but from the fact that it gave full effect to increased current market values in determining the value of land and traditions and betterments since June 30, 1914, taken at their cost less depreciation. In the light of those considerations which affect the present value of appellant's structural property which Mr. Justice Brandeis has mentioned, I cannot say that the Commission did not have before it the requisite data for forming a trustworthy judgment of the value of appellant's road or that it failed to give proof of reproduction cost all the weight to which it was entitled on its merits. Had the Commission not turned aside to point out in its report the economic fallacies of the use of reproduction cost as a standard of value for rate-making purposes, which it nevertheless considered and to some extent applied, I suppose it would not have occurred to anyone to question the validity of its order . . .
>
> This Court has said that present reproduction costs must be considered in ascertaining value for rate-making purposes. But it has not said that such evidence, when fairly considered, may not be outweighed by other considerations affecting value, or that any evidence of present reproduction costs, when compared with all the other factors affecting value, must be given a weight to which it is not entitled in the judgment of the tribunal "informed by experience" and "appointed by law" to deal with the very problem now presented. *Illinois Central, &c. R. R.* v. *Interstate Commerce Commission*, 206 U. S.

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441, 454. But if "weight in the legal sense" must be given to evidence of present construction costs, by the judgment now given we do not lay down any legal rule which will inform the Commission how much weight, short of its full effect, to the exclusion of all other considerations, is to be given to the evidence of synthetic costs of construction in valuing a railroad property. If full effect were to be given to it in all cases then, as the Commission points out in its report, the railroads of the country, valued by the Commission in 1920 at nineteen billion dollars, would have had in that year a reproduction value of forty billion dollars and we would arrive at the economic paradox that the value of the railroads may be far in excess of any amount on which they could earn a return. If less than full effect may be given, it is difficult for me to see how, without departure from established principles, the Commission could be asked to do more than it has already done—to weigh the evidence guided by all the proper considerations—or how, if there is evidence upon which its findings may rest, we can substitute our judgment for that of the Commission. Such, I believe, is the "due consideration" which the statute requires of "all the elements of value recognized by the law of the land for rate-making purposes."

As I cannot say *a priori* that increased construction costs may not be more than offset by other elements affecting adversely the present value of appellant's property, and as there was evidence before the Commission to support its findings, I can only conclude that the judgment below should be affirmed. In any case, in view of the statement of the Commission that it considered all relevant facts, including the elements of value brought to its attention by the carrier, I should not have supposed that we could rightly set aside the present order without some consideration of the probative value of the evidence of present reproduction costs which the Commission discussed at length in its report.

Cost to Reproduce an Agency of Like Capacity for Service

In a single sentence dealing with bases of valuation, the majority opinion indicated a possible view which may have future potentialities. In the *Indianapolis Water Company* case[1] the Court had said:

[1] 272 U. S. 400.

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> There is to be ascertained the value of the plant used to give the service and not the estimated cost of a different plant. Save under exceptional circumstances, the Court is not required to enter upon a comparison of the merits of different systems. Such an inquiry would lead to collateral issues and investigations having only remote bearing on the fact to be found, viz., the value of the property devoted to the service of the public.

This ruling was a part of "the law of the land for rate-making purposes" at the time of the Indianapolis decision. In his minority opinion in the instant case, Mr. Justice Brandeis indicated various factors which he considered as likely to offset present wages, prices, etc., in the ascertainment of present value, chief of these being "functional depreciation" as he broadly denoted it. He also cited specific instances of marked decline in the market or exchange value of carrier properties, even though the same were well maintained and had suffered no physical deterioration or depreciation. Perhaps with these instances of lessened market value in mind, the majority opinion said: "No doubt there are some, perhaps many, railroads, the ultimate value of which should be placed far below the cost of reproduction."

Citing several magazine articles, Mr. Justice Brandeis stated, in his dissenting opinion in this case, that:

> Independently of any statute, *it is now recognized* that, when in confiscation cases it is sought to prove actual value by evidence of reproduction cost, *the evidence must be directed to the present cost of installing such a plant as would be required to supply the same service.*

The single sentence above quoted from the majority opinion in The O'Fallon case does not seem to go so far as to be a clear or explicit reversal or abandonment of "the law of the land" as declared in the *Indianapolis Water Company* case as above quoted.

The opinion of Mr. Justice Brandeis indicates that some of the future battles as to railroad valuation may center around this "substitute plant" theory or the claim of "lessened service value" or "functional depreciation" of the existing property.

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For this contention, footnote 52 of his opinion cites first the "definition" contained in an article published in the *Public Utilities Fortnightly* (March, 1929), by Mr. Harry Gunnison Brown, as follows:

> The "Reproduction Costs" Theory
>
> The advocates of this theory of public utility valuation contend that the rates permitted should be high enough to allow a reasonable percent of return on the money that would now be required to construct a plant capable of rendering the desired service; they do not contend that the plant should be valued at what would now be needed to duplicate the plant precisely.

The distinction between the reproduction cost of a utility and the cost of installing a substitute plant of equivalent capacity had been pointed out by Mr. Justice Brandeis in his dissenting opinion in the *Southwestern Bell Telephone* case (1923), where he said:

> If the aim were to ascertain the value (in its ordinary sense) of the utility property, the enquiry would be, not what it would cost to reproduce the identical property, but what it would cost to establish a plant which could render the service, or in other words, at what cost could an equally efficient substitute be then produced. Surely the cost of an equally efficient substitute must be the maximum of the rate base, if prudent investment be rejected as the measure.

He there rejected the theory that market or exchange value should be accepted as, or enter into the ascertainment of, present value, saying:

> Value is a word of many meanings. That with which commissions and courts in these proceedings are concerned, in so-called confiscation cases, is a special value for rate-making purposes, not exchange value.
>
> Nor can the present value of the utility be determined by capitalizing its net earnings, since the earnings are determined, in large measure, by the rate which the company will be permitted to charge; and, thus, the vicious circle would be encountered.

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In his opinion, in the present case, Mr. Justice Brandeis suggests, *inter alia*:

> Much weight is to be given to present and prospective earning capacity at rates that are reasonable . . .
>
> Value is the sum on which a fair return can be earned consistently with the laws of trade and legal enactments . . .
>
> The Commission . . . must in making the finding consider the effect upon value of both the commercial and the legal limitations upon rates and, among other things, the effect of competition upon the volume of traffic.
>
> The value or rate-base . . . cannot be higher than the sum on which, with the available traffic, the fair return fixed under §15a can be earned.

The quarter-century of struggle over "physical depreciation" and "accrued" or "straight-line" depreciation, as deductions from the sums otherwise to be found as present value, seems to have been ended, and the new issue is broached as to "*functional* depreciation". Says the minority opinion:

> The physical deterioration of a railroad plant through wear and tear may be very small as compared with a plant new, while its functional deterioration may be very large as compared with a modern efficient plant. This lessening of service value may be due to any one of several causes.

Beyond doubt the tenor of the dissenting opinions in The O'Fallon case gives reason for careful reflection as to the character and extent of the proofs which will advisably be required from engineers and executives in future valuation proceedings. Use of index figures and generalized percentages may not suffice. The opinion of Mr. Justice Stone is trenchant:

> Without discussion of the evidence and other data which received the consideration of the Commission, the opinion of this Court seems to proceed on the broad assumption that the evidence relied on, mere synthetic estimates of costs of reproduction, must so certainly and necessarily outweigh all other considerations affecting values as to require the order of the Commission to be set aside. In effect the Commission is required

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to give to such index figures an evidential value to which it points out they are not entitled when applied to railroad properties in general or to this one in particular, and this, so far as appears, without investigation of the soundness of the reasons of the Commission for rejecting them.

For the present, the ruling thus far made by the Supreme Court may appear to have little or no actual effect upon the valuations being found and reported by the Interstate Commerce Commission. Sooner or later, the issues of law and fact suggested by the minority opinions will doubtless be presented for adjudication, when there is brought before the Supreme Court, in recapture proceedings or rate litigation, a valuation made in harmony with them. Not until then will the bases of valuing railroad property be fully determined and known.

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WAR INDEMNITIES AND BUSINESS CONDITIONS I

THE mechanism by which foreign payments of a non-commercial sort (such as war indemnities) are executed and the effects which they bring about for the countries concerned have so far been investigated and explained only by one theory which is consistent both in itself and with the scientific system of which it forms a part; this is the theory developed by the classical economists. In its final form as found in the work of John Stuart Mill[1] this theory runs in the following terms: The payment of the war indemnity in the currency of the debtor country (or, to use the modern terminology, the internal "collection" of the war indemnity) lowers the price level in the debtor country by reducing its monetary circulation. This fall of the price level, in turn, increases the exports and reduces the imports of the debtor country until an export balance equivalent to its foreign political indebtedness is created. This export balance then makes the "transfer" of the war indemnity—to use again the modern verbiage—possible. This is the mechanism by which the payment is effected.

Its economic effect is that the creditor country is benefited in two ways: first by receiving a certain quantity of the produce of the debtor country as an indemnity, secondly by receiving all the other imports from the debtor country at a lower price. On the other hand, the debtor country loses twice: by exporting part of its produce without equivalent, and by receiving lower prices for the rest of its exports. This being the orthodox theory on the economics of war indemnities, we shall start our investigation by trying to find out how this theory has stood the test of experience.

Since the advent of the modern business economy there have been two occasions on which war indemnities have been paid

[1] John Stuart Mill, *Principles of Political Economy with Some of Their Applications to Social Philosophy*, Book III, ch. xxi, § 4.

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and received on a large scale—first, during the last decade of the eighteenth and the first two decades of the nineteenth century in connection with the Napoleonic Wars, and second, at the conclusion of the Franco-German War of 1870. Of these two occasions the first has received scant attention from economists, for two reasons. The modern business economy was at that time still in its infant (or, according to Sombart, still in its "pre-capitalistic") stage and secondly, in most cases payments of these war indemnities were effected under conditions which were too far removed from "normal", harbored too many "disturbing factors" even for the most enthusiastic theorist. The difficulty of ascertaining just what the experiences of the countries paying and receiving war indemnities at that time were and the greater difficulty of drawing any generalizations from these experiences tended to frighten off prospective investigators.

It was an altogether different proposition with the second of the two occasions, the French indemnity of 1871. The economic problems connected with it were investigated and discussed in all their aspects by contemporary and later economists; some of these discussions have a surprisingly modern ring and certain contributions made in this connection are at least as valuable today as they were at that time.[1]

Let us now try to ascertain how in the two cases mentioned the payment of the war indemnity was made, what its effect was on business conditions in the debtor and in the creditor country and, finally, what were the effects, if any, on business conditions in neutral countries.[2]

In dealing with the mechanism through which the payment of the war indemnities was effected we shall do well to adopt a distinction made popular by the report of the Dawes Committee, the distinction between (internal) "collection" and "transfer".

We find that the collection of war indemnities during the

[1] An excellent bibliography of the works in question may be found in Horace Handley O'Farrell, *The Franco-German War Indemnity and Its Economic Results* (London, 1913), Appendix.

[2] This aspect of the problem was not dealt with in classical theory.

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Napoleonic period took place by all possible ways and means: taxation by the government, raising of (frequently compulsory) loans, "veiled" taxation by the issue of unredeemable paper currency[1] and frequently also direct requisition by the enemy.

The transfer of the amounts collected did not constitute a separate problem on these occasions; collection and transfer took place *uno actu*. The greater part of the indemnities was used for feeding, housing and clothing the French armies on the debtor country's territory; the smaller part was discharged by the export of precious metals collected in the debtor country in the form of taxes, loans, etc., and shipped to France. As far as the first mode of payment was used, there was obviously no need for the country in question to secure an export balance in order to discharge its obligation; the commodity did not need to travel to the consumer, since the consumer came to the commodity. The second mode of payment might have been expected to result in increasing French imports by raising prices in France and lowering them in the tributary countries. Here, however, the continued warfare on the Continent proved to be a very "disturbing" factor for industry and commerce, which offset the effect of these changes in monetary stock on trade movements.

Somewhat more in accordance with classical theory was the economic mechanism through which was effected the transfer of the French indemnity of 700,000,000 francs after the battle of Waterloo. Here, indeed, we observe in the case of Prussia as one of the creditors, a rise of prices for which the increase in the country's monetary stock due to the discharge of the indemnity was partly responsible. This rise in prices led to a heavy import balance with all the consequences ascribed to it by classical theory. It is, however, almost impossible to ascertain how far France *paid* her war indemnity through the medium of a reduction in her price level with the consequent creation of an export balance.

[1] It is interesting to note that the Prussian government, after the disastrous war of 1806, scrupulously refrained from even the slightest move toward a policy of inflation. In general we find among the leaders of Prussia at that time a much keener appreciation of the nature and consequences of inflation than that exhibited by their successors a century afterward.

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Turning now to the French war indemnity of 1871, we find that its collection was effected by means of three loans, the first (for the amount of 1,530,000,000 francs) being advanced to the government by the Banque de France, the second and third (known as the "two billion" and the "three billion" loan respectively) being obtained by the sale of government bonds in France and other countries.[1]

The transfer of the war indemnity was effected in the following manner.[2]

	Million francs	*Per cent*
Sale of government securities abroad and of foreign securities held in France	1,400	29
Sacrifice of income from foreign investments	1,500	31
Net commodity exports	420	8
Coin and notes	1,000	20
Unaccounted for	600	12
	4,920	100

Two interesting and important facts are conveyed to us by these figures. The first is, that less than 10 per cent of the French war indemnity was paid for by an export balance in foreign trade; the second is, that France paid over 70 per cent of her war indemnity out of current revenues and less than 30 per cent by drawing on the principal of her foreign investments. This original reduction in the principal of French investments abroad was, moreover, offset (or more than offset) during the next two years. In 1874 and 1875 France had again an export balance of over 500,000,000 francs; this balance and the income from her remaining foreign investments taken together exceeded her previous loss of capital by about 200,000,000 francs.[3]

[1] *Cf.* Léon Say, *Les Finances de la France sous la Troisième Rêpublique* (Paris, 1898), vol. I, pp. 363 *et seq.*; Horace Handley O'Farrell, *op. cit.*, pp. 2-3, 9; Arthur E. Monroe, "The French Indemnity of 1871 and Its Effects", *Review of Economic Statistics and Supplements* (Cambridge, Mass.), October 1919, pp. 269-81; F. W. Taussig, *International Trade* (New York, 1927), ch. xxii, pp. 263 *et seq.*; National Industrial Conference Board, *The Interallied Debts and the United States* (New York, 1925), ch. vi, pp. 138 *et seq.*

[2] Natl. Ind. Conf. Bd., *op. cit.*, p. 172.

[3] *Ibid.*, p. 173.

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Curiously enough, this fact escaped the notice of contemporary economists. When German economists maintained that, by raising a foreign loan, France had effected nothing but a change in creditors and merely delayed the meeting of her obligation, and when the French economist Wolowski in an article written at the end of 1874[1] admitted this charge but defended this policy by pointing to the unimpaired productive capacity and the rapid economic recovery of his country, both he and his German opponents were wrong in their fundamental assumptions. As a matter of fact, the deficit in the balance of French foreign investments amounted to only ten or fifteen per cent at the time when his article was written and was presumably eliminated eight or nine months afterward. By the end of 1875, France had paid the entire war indemnity out of her current foreign revenue.

We see, then, that in both of the cases before us, the transfer of the payments was not primarily effected by an export surplus of the tributary country. We have also found the reasons for this seeming discrepancy between theory and experience: in the case of the Napoleonic indemnities it was the presence of a large French army on foreign soil the support of which constituted the main item of the indemnity payment; in the case of the Franco-German War indemnity it was the existence of large foreign investments of the tributary country which made it possible for her to discharge her foreign obligations with only slight temporary export balances.

In both cases, however, the classical thesis concerning the automatism of the transfer was verified. There was, apparently, no transfer problem in the case of the Napoleonic indemnities, and in the case of the French war indemnity of 1871 the problem was not whether the transfer of the war indemnity could be effected but how to effect it with the least possible disturbance of the international money market; a problem which, on the whole, was successfully solved thanks to the skill of the French treasury officials.

[1] Louis F. M. R. Wolowski, "Résultats économiques du paiement de la contribution de guerre en Allemagne et en France", *Journal des Économistes*, Décembre 1874.

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The result of our investigation has been, so far, that the classical theory was not verified in its thesis that the transfer of war indemnities would take place through the creation of an equivalent export balance by the tributary country, but that it was verified in its contention that the transfer would take place automatically. Examining the bearing which these results may have on the present German reparation problem, we find, however, that almost all economists uphold the validity of the first classical thesis but, implicitly or explicitly, deny the validity of the second. According to their almost unanimous opinion Germany will pay reparations by creating an equivalent export balance and the extent to which she can pay reparations hinges upon the amount of the export balance which she can establish.

The reason why the first classical thesis is upheld by writers on the reparation problem although it has been refuted by experience is that none of the "disturbing factors" present on previous occasions has now to be counted with: the payment for the support of the Allied troops on German territory constitutes only an insignificant fraction of the reparation annuities and will cease with the evacuation of the Rhineland; the foreign investments of Germany, on the other hand, have either been disposed of or confiscated; finally, the payment of reparations by raising foreign loans is, according to the almost unanimous opinion of writers on this subject, only a temporary expedient admissible during a period of transition, after which Germany's exportable surplus will have to provide not only for her reparation payments but also for the service of her foreign commercial debts.

The reason why the second classical thesis has been abandoned by economists although it has so far been verified by experience seems to be that they consider the reparation problem to transcend the limits within which the automatic working of the "Ricardian mechanism" is assured, these limits being drawn by a somewhat elusive but extremely potent factor—the country's capacity to pay.

It is interesting to note that the classical thesis on the automatism of transfers is now upheld by a few dissenters who are

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"practical business men" and who think of their views as being rather revolutionary, although, as we have seen, they represent the most orthodox doctrine of most orthodox economic theory in a very literal application. The most notable among these dissenters are George P. Auld[1] and Robert C. Long.[2] Reduced to the simplest terms, their views are:

(1) The collection of the reparation payments in Germany results in the creation of an "economic surplus" which will be automatically transferred by lowering prices and raising interest rates in Germany. This transfer will take place either by the creation of an equivalent export balance or by the raising of new foreign loans, according to whether Germany will find it more profitable to increase her exports or to increase her foreign indebtedness.[3]

(2) There is no difference, from the economic point of view, between the foreign loans now contracted by Germany and the foreign loans contracted before the war by the United States, Russia and other capital-importing countries.[4]

Let us now consider these two points. Starting with the second, we find that the alleged identity in the economic character of the loans now advanced to Germany with those advanced before the war to the United States has been subjected to a lucid criticism in a recent work by Professor Max Sering,[5] who advances the following objections: (1) The pre-war loans were advanced to thinly populated countries with great natural resources. In such countries a small additional investment of capital results in a large increase in national income. The present loans, on the other hand, are advanced to a densely populated country with relatively small natural resources where the reverse holds true. The former loans could, therefore, be expected, *a priori*, to take care of their interest and amortiza-

[1] George P. Auld, *The Dawes Plan and the New Economics* (New York, 1927).

[2] Robert C. Long, *The Mythology of Reparations* (London, 1928).

[3] Auld, *op. cit.*, p. 162; Long, *op. cit.*, p. 53.

[4] Auld, *op. cit.*, ch. xii (The Transfer Bugaboo and the American Investor).

[5] Max Sering, *Deutschland unter dem Dawes Plan* (Berlin and Leipzig, 1928).

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tion charges and still leave a large surplus, whereas the latter cannot be expected to do so with the same certainty. (2) The former loans were used entirely for the economic development of the country, but German loans are largely used for the payment of tribute and, to this extent, do not increase the wealth of the nation.[1] Professor Sering's arguments seem to be essential from the theoretical point of view. In our discussion of the first point made by Mr. Auld and Mr. Long we shall see that they also have far-reaching practical consequences.

It seems advisable to start the discussion of this first point—the alleged automatism of reparation transfers—by analyzing the nature of the "economic surplus" brought about by the collection of the reparations in Germany. An "economic surplus", in the sense in which the two authors employ this term, obviously means a surplus of national production over national consumption. Theoretically, therefore, such an "economic surplus" may be created either by increasing production or by decreasing consumption. If we regard production as a more or less fixed quantity and let consumption decline to the bare minimum of physical existence, then this "surplus" will become very large and may amount in the case of Germany to perhaps more than half of the national income.[2] Under this assumption, too, the internal collection of the reparation payments will be tantamount to the creation of an equivalent "economic surplus". In practice, however, there are several

[1] Sering, *op. cit.*, pp. 173 *et seq.*

[2] Some procedure of this kind was presumably followed by those experts of the Allied Powers at Versailles who estimated Germany's capacity to pay at 120 billion dollars.—*Cf.* Reginald McKenna, *Post-War Banking Policy* (London, 1928), p. 59. Mr. Long, too, seems at least occasionally to incline toward this method, e. g. when he tries to prove that tariff barriers are no obstacle to the payment of reparations by stating: "Utopia [i. e. Germany's reparation creditor] might raise her tariff so high that she could exclude all the former non-reparation goods from Germany, but in this case Germany would buy nothing at all from Utopia, and as she would still be paying the 10,000 pounds [i. e. her reparation annuity] to Utopia her old export surplus of 10,000 pounds would remain."—*Op. cit.*, pp. 92-93. Incidentally, we may add, the one-fourth of the German population that depends upon foreign imports for its subsistence would starve.

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reasons why such a course cannot be pursued. In the first place, the standard of living in Germany could not be depressed below a level which, according to Western standards, is considered decent, without creating the fiercest resentment not only in Germany but also in the creditor countries where the working population would, not without reason, consider German living conditions as a constant danger to its own standard of life. The social and political friction thus created would wreck any reparation scheme and might have even graver consequences. Secondly, a low standard of life in Germany would jeopardize all attempts to raise the productivity of labor. It has been proved by experience that poorly paid workers are inefficient and that it is impossible to raise the level of efficiency without raising wages. This is the experience which has found expression in the American aphorism about the "high cost of cheap labor".

By these two considerations mentioned the standard of living to be maintained in Germany and consequently the amount of wealth necessary to maintain it are for practical purposes pretty well determined. However, the German national income must not only maintain this standard of life for the present, but also leave for investment purposes a surplus large enough to secure a "decent" standard of life (which presumably will be higher in the future) for a constantly growing population.

If, then, the volume of consumption and the volume of savings in Germany are regarded as quantities which cannot be indefinitely compressed, the "economic surplus" becomes identical with the amount of wealth produced in excess of these two requirements. In this case, however, we have no guarantee that the reparation payments collected in Germany represent an "economic surplus" in the sense in which we have just defined this term. They may well exceed it, and if they do the consequence will be either a decline in the German standard of living below the level of "decency", or an insufficient expansion of production facilities in Germany, or, finally, excessive borrowing abroad to make up for the deficit in national savings. Let us now try to determine whether any of

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these possible consequences has been actually realized in Germany.

With regard to the standard of living in Germany we have definite statistical information available to the effect that it has risen from the low point reached during inflation in 1923 to approximately the pre-war level. This information is conveyed to us by statistics of real wages, meat consumption, the yield of certain indirect taxes (like the sugar, beer and tobacco taxes) and by other indices which all tend to confirm this impression.[1] We may, therefore, state that, on the whole, a decline of the German standard of life below the level of "decency" has not taken place.

With regard to the second possibility—an inadequate accumulation of national savings in Germany—we have less statistical information. According to the estimates of the Reichs-Kredit-Gesellschaft,[2] which are liable to be too high, the volume of national savings in Germany amounted to:

6.4	billion	marks	in	1925
6.3	"	"	"	1926
7.6	"	"	"	1927.

In order to determine whether or not these savings are to be considered adequate we shall have to compare them with the volume of pre-war savings in Germany. We find that the volume of German savings in 1927 was nominally almost exactly equal to the volume of savings before the war, estimated by Helfferich at 8.5 billion marks, of which one billion was used

[1] It should be noted, however, that the statistical information available has to do mainly with the standard of living among the working classes. From information of a non-quantitative sort we gain the impression that the standard of life among the middle classes and also among the agricultural population in Germany is still considerably lower than before the war.

[2] *Deutschlands wirtschaftliche Lage im I. Halbjahr 1928.* A copy of this publication not being available to us, we obtained the figures referred to from quotations found in Long, *op. cit.*

[3] Vitiating factors are: the rapid appreciation of German real estate during this period, the revalorization of German bonds and mortgages and the expansion of foreign deposits in German banks. In consequence of these factors there are many increases in book assets to which no increase in physical assets corresponds.

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for the expansion of German investments abroad.[1] Reduced to their pre-war purchasing power, German national savings invested at home amounted to 60 or 70 per cent of their pre-war aggregate according to whether we deflate the marks of 1927 with the index of wholesale prices (fluctuating around 140) or with the index of construction costs in Germany (fluctuating around 170). Since the population of Germany was in 1927 only about 5 per cent below the average population of Germany during the period from 1910 to 1913, for which Helfferich's estimate was made, we may conclude that Germany's *per capita* savings are now from one-fourth to one-third smaller than the *per capita* savings before the war invested in Germany and that they are 35 to 45 per cent smaller than her total *per capita* savings accumulated in each of the three last pre-war years—always provided that the estimates of the Reichs-Kredit-Gesellschaft are not too high.

An accumulation of German capital at the present rate would have to be considered inadequate even during more normal times, even if there had been no war, no inflation, no stabilization crisis. It is obviously inadequate to meet demands of an exceptional character like those due to the waste of capital in war and inflation, the loss of productive equipment in the ceded territories, and obsolescence of technical equipment in consequence of the rapid technical progress of the last decade. It might be expected that Germany would have to contract extremely heavy foreign debts in order to satisfy even the most urgent needs of her economy. This expectation is verified by all the information we possess concerning the scale of her foreign borrowing since the adoption of the Dawes Plan.

Using again the estimates of the Reichs-Kredit-Gesellschaft we find that the foreign loans raised by Germany for productive purposes (excluding the loans raised for increasing the gold

[1] We follow Mr. Long's precedent of subtracting foreign investments from national savings, though it is uncertain to what extent a procedure of this kind is admissible. This procedure implies that the only amount important from the standpoint of national savings is the part invested in the expansion of the productive equipment at home while, as a matter of fact, an increase in foreign investments is at least equally important inasmuch as it also represents a gain in the country's wealth and presumably even a larger gain.

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and foreign exchange reserves of the Reichsbank and of the private banks) have reached the following totals:

	Long-term loans	*Short-term loans*	*Net capital import*
		(in billions of marks)	
1925	1.24	2.56	3.80
1926	1.60	— .94	.66
1927	1.34	3.06	4.40
	4.18	4.68	8.86

Taking into account the foreign loans contracted for maintaining the stability of German currency, we find, then, that Germany's foreign debts have increased by about one billion dollars in 1925 and by 1.2 billion dollars in 1927. Estimates for 1928 are still unavailable but it is probable that the increase in Germany's foreign indebtedness during that year will be above rather than below the figure for 1927. The significance of these figures may be grasped most readily by considering that, according to the best authority, the total net increase in the foreign indebtedness of the United States during the eighteen years from 1896 to 1914, i. e. during the period of her most rapid economic expansion, amounted to only one billion dollars.[1] It might be argued that these figures are not altogether comparable on account of the decline in the purchasing power of money after the war. This decline, however, has been vastly more than offset by the rise in interest rates. If prices have advanced 40 per cent since the last pre-war year, interest has advanced, at least as far as Germany is concerned, by about 80 per cent. The average yield of a high-grade American bond amounted to 4 per cent before the war, whereas the present yield of a German bond of equal intrinsic value varies between 7 and 7½ per cent. Expressing the increase in Germany's foreign debt in terms of change in interest charges rather than in principal, we may state that, during each year since the adoption of the Dawes Plan (with

[1] *Cf.* Charles J. Bullock, John H. Williams and Rufus S. Tucker, "The Balance of Trade of the United States", *Review of Economic Statistics and Supplements* (Cambridge, Mass., 1919), p. 232.

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the exception of 1926) the increase in Germany's interest on her foreign debt was at least 30 per cent larger than the increase in the interest on America's foreign debt for the eighteen-year period from 1896 to 1914.

The difference between the rate of increase in German and American foreign debts becomes still more impressive if we consider this increase in relation to the increase in national savings. The average annual increase in American foreign debts during the period 1896–1914 (yearly data are unavailable) amounted to about 55,000,000 dollars. This amount could have in no case exceeded 2 per cent of the yearly national savings, the latter being estimated at 15 per cent of the national income; in Germany, on the other hand, the ratio between the increase in foreign debts and the increase in national savings amounted, in 1927, to 62 per cent, as we readily discover by dividing the total estimated increase in foreign debts (4.75 billion marks) by the total estimated increase in national savings (7.6 billion marks). The ratio between the increase in Germany's foreign debts and the increase in her national savings was, therefore, at least thirty-one times higher in 1927 than the average ratio between these two magnitudes used to be in the United States before the war.

Even granting Mr. Auld's proposition that there is no difference in kind between the foreign debts incurred by the United States before the war and the foreign loans raised by Germany now, it would be inexcusable to shut our eyes to their tremendous difference in degree, i. e. toward the difference in the extent to which the practice of settling "current interest and sinking fund charges on that debt by incurring fresh debt"[1] has been pursued in one case and is being pursued in the other.

The salient point is, of course, whether these figures do or do not prove that Germany's foreign debts are increasing at an excessive rate. This question cannot be answered with a straight "yes" or "no" since it is impossible to determine *a priori* the limit of safety in a country's foreign indebtedness.

[1] Auld, *op. cit.*, p. 162.

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It might be insisted, on purely logical grounds, that the foreign debts of a country may increase no matter on what scale as long as there is a single piece of property in that country which has not yet passed into the possession of foreigners. However, even if we state our conclusions in the most conservative fashion, we may still say that they suffice to shake a too serene confidence in the automatism of reparation transfers and that they go very far indeed toward endorsing the opinion of those who hold that Germany's borrowing abroad cannot continue for a considerable time at the present scale, or anything approaching the present scale, and that in the near future Germany will have to pay reparations out of her own current income. We shall therefore devote the next pages to considering what the prospects are of increasing Germany's "annual produce of labor" sufficiently to enable her to bear the additional burden of reparations.[1]

A country's capacity to pay, i. e. her ability to produce an economic surplus in the sense in which we have defined this term (viz. as a surplus over what is needed to secure a decent standard of life for her present population and for her anticipated larger population in the future), obviously depends upon two sets of factors, one set determining her volume of production, the other set determining her volume of consumption.

If the working population forms a constant fraction of the total population, an increase in capacity to pay is to be traced to a single factor: the productivity of labor. The basic factor determining the productivity of labor is the ratio of the working population to the total resources of the country, i. e. the

[1] The reader should note that we are dealing here only with the factors determining the country's capacity to pay, assuming a perfect willingness on the part of the debtor country to discharge its obligations and an equal willingness of the creditor countries to facilitate their discharge. The policy to be pursued in order to assure a smooth working of the mechanism for the collection and transfer of reparations, within the limits set by the debtor country's capacity to pay and the creditor countries' capacity to receive, has been admirably described by F. W. Taussig in his recent article entitled "Deutschlands internationaler Handel und das Reparationsproblem", *Archiv für Sozialwissenschaft und Sozialpolitik*, Oktober 1928.

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natural resources found on its own territory, as far as they are exploited, plus the foreign resources which it commands by virtue of political or legal claims as tribute or as interest on its foreign investments. At any given state of technique productivity will tend to move in direct proportion to the change in the resources and in inverse proportion to the change in the working population of a given country, this phenomenon being due to the operation of the so-called "law of diminishing returns".

It is a matter of common knowledge that Germany has suffered appalling losses in her resources in consequence of the war and of the peace treaty: losses in land, in mineral supplies, in property, in shipping, in economic rights, in colonial possessions. It seems advisable to give some estimates (necessarily approximate) of these losses since the facts concerning them are too well known not to be frequently forgotten.

The losses due to the confiscation of Germany's foreign investments and of her merchant marine are the easiest to evaluate. According to the estimates of Moulton and McGuire,[1] Germany's revenue from these sources, in 1913, was as follows:

	Millions of marks
Interest on foreign investments	1,000–1,250
Revenues from shipping	540
Revenues from insurance policies, etc.	340

Altogether, then, Germany's annual revenue from these three sources amounted to about 500,000,000 pre-war dollars or 700,000,000 dollars of present purchasing power, an amount larger than the German standard annuity under the Dawes Plan.

The losses in German resources due to the cession of German territory have been estimated by the German government at the following figures.[2] (The losses are given in percentages of the total output before the war.)

[1] Moulton and McGuire, *Germany's Capacity to Pay* (New York, 1923), p. 268.

[2] The estimate is cited in the article "Friedensvertraege", *Handwoerterbuch der Staatswissenschaften* (4th ed., 1927), p. 473.

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	Per cent
Anthracite output	25.9 [1]
Iron ore output	74.5
Zinc ore output	68.3
Production of wheat and rye	15.7
Production of potatoes	18.0

To these we have to add the loss of the Alsatian potash mines to France.

In the third place we have to consider the losses of a non-material character, i. e. those occasioned by the confiscation of German patents, the liquidation of German business enterprises abroad, the rupture of long-established foreign business connections, etc.—losses which are none the less serious for their resistance to quantitative evaluation.

If we consider, finally, that Germany's loss of population in consequence of the peace treaty originally amounted to only 9.97 per cent and that this loss has subsequently been reduced to about 4 per cent by immigration from the ceded territories and by the natural increase in population, we should expect, *ceteris paribus*, a substantial decline in the productivity of labor in Germany.

Another factor making for a decline in the productivity of labor is the qualitative deterioration of the working force due to the loss in man-power occasioned by the war. In round figures German war casualties amounted to 2,000,000 dead and 1,500,000 crippled. Assuming that those crippled have lost, on the average, one-third of their productive capacity, we should then conclude that Germany's total war losses amounted to 2,500,000 of the most productive members of her working population, when their productive capacity was at its peak.

These losses have been partly compensated by the effects of the reduction in the German army and navy since the war. The personnel of the standing army and of the navy amounted, in round figures, to 900,000 men before the war. To this number we have to add some 400,000 workmen directly or

[1] Not counting the Saar basin the permanent loss of which would increase the total to *ca.* 38%.

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indirectly engaged in the production of war materials[1]—altogether some 1,300,000 men. The present personnel of the German army and navy, the workers now producing war materials and, finally, the additions to the police force made necessary by the reduction of the standing army, amount together to about 300,000 men. The total saving in man-power brought about by the reduction in Germany's armed forces may thus be estimated at 1,000,000 men. Subtracting this figure from the total of German war casualties we find that the total loss in German man-power amounts to some 1,500,000 men, a loss which is still serious enough.[2]

In Germany, as in the other belligerent countries, this loss in man-power occasioned by the war is, at the outset, not evident in the statistics available concerning the number and the changes in the working population of the respective countries. The general trend of economic evolution, which in Germany has been powerfully aided by the economic distress of the middle classes brought about by the monetary inflation, has brought new recruits to the ranks of the working population from the former leisure classes and this increase has, in all cases, more than offset the losses due to the war. This has happened in Germany to a particularly large extent; according to the latest German census the total population on the present territory increased by 7,419,022 between 1907 and 1925, while the increase in the working population amounted to 6,853,636 during the same period; this means that the present working population in Germany is some 3,500,000 larger than it would had been if there had been no war. The losses of the working population due to war casualties have been made good by increasing the fraction of the total population which is gainfully employed. This increase in the ratio between working population and total population would make for a greater "economic surplus" were it not for the deteriorated quality of the

[1] This is a rough estimate based on estimated expenditures for war materials.

[2] No attempt has been made in this estimate to make allowance for the changes in German territory and population brought about by the peace treaty since there is no information available concerning the distribution of war losses between the population of the ceded and of the retained territories.

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working population. It is evident that such a deterioration of the working force must take place when old men or girls are made to perform jobs which formerly were entrusted to men between the ages of twenty and thirty-five.

The volume and trend of consumption in Germany, on the other hand, will be largely determined during the next decades by the fact that the increase in the German working population will be smaller than the increase of her total population, this being due to a simultaneous decline in the birth and death rates. According to the estimates of the Statistische Reichsamt the number of dependents per 100 persons gainfully employed will amount, during the next decades, to the following figures:

1925	110.7	1955	120.3
1935	115.4	1965	130.2
1945	115.2	1975	140.7

Up to 1945, then, the relative increase in the number of dependents in Germany, or—to put it the other way round—the relative decline in the German working population, will not be large and its effects are even likely to be beneficial, inasmuch as it will tend to relieve unemployment and encourage improvements in the utilization of labor, as the Agent General for Reparations has pointed out.[1] Later on, however, this discrepancy becomes too large to be offset by any possible increase in German employment and it will amount only to being an additional drain on the "annual produce of labor" in Germany and to reducing, as a consequence, any "economic surplus" available.

If we were to end our investigation at this point its result would be an unqualified endorsement of the most pessimistic views on the workability of the Dawes Plan, the Young Plan or any other possible scheme of reparation. Briefly stated, our conclusion would be that Germany has not paid reparations annuities out of her own national resources in the past (this fact is undisputed), and that the losses in her re-

[1] *Report of the Agent General for Reparation Payments, December 22, 1928* (Berlin, 1928), p. 162.

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sources during and after the war as well as the changes in the relation between her working and her total population would make it impossible for her even to maintain the pre-war standard of life among her people, not to speak of the possibility of paying reparations on any appreciable scale. In harmony with Keynes,[1] Cassel[2] and others we should have to predict the collapse of the present system at the moment when Germany would be unable to obtain sufficient foreign loans not only for paying reparations but also for replenishing her wage fund to an extent which would permit her working population to maintain the present standard of life. The reason why we refrain from drawing this conclusion lies in our consciousness of having overlooked one important factor in this connection: the factor of technical progress. So far we have considered our problem under the assumption of "other things being equal" and we have now to find out how our conclusions will be modified by the fact that these "other things" will most certainly not be "equal". Technical progress will be the main factor responsible for their change.

Technical progress always results in increasing the productivity of labor in a given country but it does not necessarily increase its national product. It has the latter effect only to the extent to which it brings about an absolute or a relative increase in the country's natural resources, i. e. to the extent to which it either opens up new resources or improves the utilization of the resources already available. A classical instance of the first kind would be the recent inventions which use the nitrogen from the air for the production of fertilizers, while the second case is best illustrated by the improvements in the field of power machinery which make it possible to obtain the same amount of energy by using only half the quantity of coal necessary a decade ago. When technical progress does not result in an increase—absolute or relative—of a country's natural resources it may increase the productivity but it does not

[1] J. M. Keynes, in *The Nation and Athenæum*, September 11, 1927. "Reparations and interallied debts are mainly settled in paper and not in goods".

[2] Gustav Cassel, "The Dawes Plan Unworkable", *Financial News*, October, 1927, p. 25.

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increase the product of its labor. The use of less labor to convert a certain quantity of raw materials into finished products does not increase the total wealth. The only effect of a technical progress of this sort, aside from a possible reduction in working hours, is to reduce the number of workers required, thus creating unemployment and ultimately changing the vocational distribution of the population.

It is true that even if technical innovations are not accompanied by an enlargement of natural resources the national product may be increased (1) by applying part of the labor released to a more intensive exploitation of existing natural resources or (2) through foreign trade, by exchanging final goods produced at lower costs against raw materials. Germany would have to rely chiefly on the second device. Obviously, however, the range of possible expansions in production is more limited in this case, and such expansions may, as far as Germany is concerned, result in grave disturbances on the world markets. Germany is now more than ever a country which has to subsist by buying raw materials which are hard to buy and converting them into finished products which are hard to sell; the reparation scheme, on the other hand, forces Germany to obtain what Professor Angell calls a "relative excess of commodity exports", i. e. "an excess relative to the position the trade balance would have occupied in the absence of the transfer operations".[1] Assuming now that it is found necessary to obtain such a "relative excess" in the German balance of trade to the amount of a millions of marks, Germany will have to secure, in the second case of technical progress, additional imports of raw materials to the amount of x millions. Her total exports, then, will have to be increased by $x + a$ millions, in order to bring about the desired effect. The volume of additional German exports will, then, be much larger than her "relative excess of commodity exports"; the pressure of German competition on the world market will be out of proportion to the effected changes in her balance of trade.

[1] James W. Angell, "Reparations and the Cash Transfer Problem", POLITICAL SCIENCE QUARTERLY, September, 1926, p. 347.

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Having settled these preliminary questions we are now in a position to attack our main problem; the presumable effect of technical progress on Germany's capacity to pay.

Respecting the number and importance of technical inventions to be expected in the future and their effect upon the level of production, we may be reasonably optimistic. Pessimistic forecasts have been made by Professor Sombart with regard to the trend of productive activity in the old capitalistic countries.[1] Sombart's prognosis seems, however, somewhat doubtful. Our optimism is based, in the main, on the fact that inventive activity is being "institutionalized" to an increasing extent. Inventions, nowadays, are rarely made by individual effort and individual luck, but are, in the main, a product of continuous coöperative research carried on in a systematic fashion with all the technical assistance required. This kind of research activity is certain to yield results continuously, and since the research is carried out in close touch with the business concerns interested in improving their methods of production it is equally certain that the inventions will be applied to productive processes at the earliest possible moment. Inventions will be constantly made and applied although we have no way of knowing just what the importance of these inventions will be at any given period. We are, therefore, inclined to agree with the conclusion of one of Sombart's most prominent critics when he writes that "an economic mentality mitigating the quest for profits by social considerations, an economic order pursuing the same ends may, in connection with a high level of technical efficiency, still bring about the golden age of capitalism".[2]

[1] Werner Sombart, "Die Wandlungen des Kapitalismus", *Weltwirtschaftliches Archiv,* vol. XXVIII, pp. 243 *et seq.*

[2] Christian Eckert, "Aussichten des Kapitalismus", *Weltwirtschaftliches Archiv,* vol. XXIX, p. 25.

It is not without interest to note that predictions very similar to those of Sombart were made by the French economist Maurice Block towards the end of the depression following the crisis of 1873. M. Block's prognosis was also to the effect that a further expansion of the capitalistic economy would not take place on any considerable scale since the industrial revolution had almost spent itself and man's mastery over nature could not be carried much further. The

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When we approach the problem of the prospective influence of technical progress on Germany's future capacity to pay, caution must tincture optimism. The question to be answered then, is not what future technical progress we may expect but how much of this technical progress will fall within the next two or three decades, during which the reparation problem will or will not be solved, and, further, to what extent these new inventions will be applied to German industry. Even when we bear these two points in mind we may still maintain that technical progress will produce a powerful tendency toward increasing the volume of productive activity in Germany and thereby toward increasing Germany's capacity to pay. We have now to investigate what forces will aid this tendency and what forces will counteract it.

The forces working with technical progress for an increase in German production will presumably be the pressure of necessity and the German genius for organization. We must be content with simply mentioning these factors without going into them any further, since they are of a psychological character and little can be learned about them by an economic investigation. They are, however, by no means unknown quantities, since it has been demonstrated what influence they had in averting the catastrophe with which economic life in Germany was threatened after the Ruhr war and the total depreciation of the German currency, and how instrumental they were in restoring the German economy to its present level of relative prosperity. We may expect these forces to work with undiminished efficiency in the future.

The factors which presumably will work against a rise in the German level of production may be classified under three headings: high interest rates, high taxes and the probability of a downward trend in the price level during the next decades.

There can hardly be any doubt that interest rates will be higher in Germany than in the other industrial countries for

utmost that could be hoped for was, according to that author, perfection in some details of the inventions already made. Maurice Block, "La Crise économique", *Revue des Deux Mondes,* Mars 1879.

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the time being. The point which is open to discussion is the influence of this factor on the level of production in Germany. High interest rates tend to reduce the volume of productive activity by increasing costs of production and thereby decreasing business profits. Recent investigations conducted by Dr. Carl Snyder[1] have shown that interest charges constitute a relatively small item in the total costs of conducting business. Stock-market operations and wholesale trade are exceptions to this rule. These results, however, must again be qualified in two ways in order to make them applicable to German conditions.

The first qualification concerns the rôle of credit in German business enterprises. A distinctive feature of German business has always been the large measure of its dependence upon bank credits for working capital. Even before the war it used to be said that German business was conducted "on a margin". The virtual wiping out of all liquid assets through inflation has increased this tendency toward relying on bank loans for the supply of adequate working funds. German business concerns have, on the other hand, pursued an extremely conservative dividend policy since the stabilization of the mark and have taken care to reinvest substantial percentages of their earnings in their business. The very fact that interest rates are high will presumably encourage them to pursue this policy in future. The degree to which interest rates will influence costs of production in Germany will, therefore, ultimately depend upon the extent to which German concerns prove to be able to continue this method of "self-financing". We may, however, be sure that interest charges will always constitute a larger item in the costs of production in Germany than in the United States, because German industry will not be able for a long time to make good the losses in working capital due to inflation and to the economic crisis which followed it.

The second, and still more important, qualification concerns the availability of credit in Germany. In order to remove a

[1] Carl Snyder, *Business Cycles and Business Measurements* (New York, 1927), ch. xii, esp. p. 227.

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most serious obstacle to an increase in the efficiency and in the level of German production it is absolutely essential that the interest rates quoted in Germany should be actual and not merely nominal. By this we mean that German business concerns should be able to secure for themselves adequate credit accommodations at these rates if their general position justifies a further increase in their bank loans. Wherever an industrial enterprise conducted on a high level of business efficiency and having ample assets may still be reduced to bankruptcy because national capital is unable and foreign capital is unwilling to tide it over a short period of financial embarrassment, there, indeed, we are in the presence of a situation which tends to discourage all efforts toward improving business technique and expanding business activity. This situation existed in Germany during the early phases of stabilization; it still exists in many countries of eastern and southeastern Europe; and there is no guarantee that Germany will not have to face it again. Our conclusion, then, is that credit conditions will tend to counteract expansion in German business activity to an appreciable extent, although their influence is likely to be smaller than that of the other two factors which are now to be considered.

Theoretically an increase in taxation, *ceteris paribus*, will always result in a decline in business activity, either by reducing business profits if the tax is paid by the producer, or by reducing the purchasing power of the public if the tax is shifted to the consumer. Actually it is well known that these "*cetera*" do not remain "*paria*", and the skill of the tax legislator as well as that of the tax administrator is shown in imposing and collecting the taxes in such a way that they will themselves create counter-tendencies which will neutralize their main tendency toward reducing business activity. Thus a tax on certain raw materials may lead to an improvement in their quality and utilization (this was the case with the tax on sugar beets before the war); a tax on business profits may lead to an improvement in business efficiency by putting a premium upon plowing earnings back into the enterprise in the form of silent reserves and also by stimulating the search for better methods of production and selling, it being a common experience that the

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business man will exert himself more to avoid a decline in his profits than to secure an increase. Instances of this kind may be multiplied. Mere common sense would suffice to tell us, however, that this possibility exists only within certain limits. There is a point beyond which taxation cannot be increased without changing the negative correlation between the movement of the tax burden and that of the other factors in question into a positive correlation. If taxes have reached this critical point, the effect of their further increase on business activity would not be counteracted by the improvement of business efficiency but would be emphasized by its decline. "We cannot doubt . . . that taking the nation through there is a point beyond which, if taxation continues so high as to give only a very small return for additional effort and for the risk of additional capital, it will become a matter of general occurrence that the effort will not be made and the capital will not be risked".[1]

Whether this point has or has not been reached in Germany is still a matter of controversy. The general impression seems to prevail that, at best, the level of taxation in Germany has come perilously near this danger point and may at any moment transgress it in future if it has not done so already. This view is presented in the well-known memorandum of the Agent General to the German government.[2]

The most serious obstacle to the future expansion of production in Germany and still more to Germany's capacity to pay

[1] Reginald McKenna, *op. cit.*, p. 48.

[2] The Agent General for Reparation Payments, *Memorandum for the German Government* (Berlin, October 20, 1927).

It has been frequently maintained that the purpose of the Dawes Plan was to equalize the tax burden in Germany and in the Allied countries. We cannot accept this view on the ground that it does not consider how the tax burden in Germany has been increased by the cancellation of the national debt. In the Allied countries *ca.* fifty per cent of the revenues are used for the service of internal debts, which means that fifty per cent of his taxes are "refunded" to the taxpayer in these countries in the form of interest and sinking-fund payments on government bonds held by him. In Germany this "refund" does not take place. A rate of taxation in Germany which seems to be equal to that in the Allied countries would in reality represent a tax burden which is twice as high.

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would consist in a gradual decline of the price level during the next decades. If the general view now prevailing among economists[1] that we have entered into a long period of falling prices should be verified, this would affect Germany's capacity to pay in two ways: (1) by increasing the burden of reparation payments and of the interest and sinking-fund charges on Germany's foreign commercial debts and (2) by slowing down the rate of increase in Germany's productive activity.

That a fall in prices increases the burden of all debts previously contracted goes without saying. If prices fall twenty per cent the same amount of money will now buy twenty-five per cent more commodities than it did before, and consequently the debtor will have to increase his output and his sales by twenty-five per cent in order to discharge his obligation. The burden which this throws upon him is obvious and has been amply shown by experience. In the past this burden has been somewhat alleviated by the fall of interest rates during periods of declining prices. Even if such a decline should take place now it would be of little benefit to Germany; it would not decrease her reparation annuities which are fixed in money, nor would it decrease the interest charge on her long-term foreign debts, since almost all the German bonds issued abroad are unredeemable until the middle of this century and will therefore continue to yield their present interest, regardless of changes on the capital market.

While a decline in the price level will thus require a constantly increasing quantity of Germany's "annual produce of labor" for the discharge of her foreign political and commercial obligations, it is fairly obvious that it will also tend to prevent an increase in this "produce of labor". A fall in prices tends to bring about a decline in business profits which, in its turn, is the most effective check on expansion of business activity. This theoretical consideration has been amply verified by experience. All the statistical information available in

[1] *Cf.* Gustav Cassel, *Post-War Monetary Stabilization* (New York, 1928), ch. ii, and, by the same author, *Memorandum on the World's Monetary Problems* (London, 1921).

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the various industrial states tends to show that the rate of increase in productive activity was smaller during the period of falling prices from 1873 to 1896 than during the following period of rising prices extending from 1896 to 1914. The discrepancy between production trends during these two periods becomes still more marked if we consider the increase in production in connection with the increase in population, i. e. if we compare the trends of *per capita* production rather than those of total production.

It is, indeed, theoretically possible that the decline in the costs of production will be still greater than the decline in prices; in this case there would be an increase in business profits and an increase in business activity in spite of the decline in prices. To regard such a phenomenon, however, as a normal occurrence, would be quite unwarranted, although it was actually observed in the United States during 1925 and 1926 when a period of business prosperity coincided with a fall of the price level. On the whole we may still maintain that falling prices entail business depression, although this rule, invariably true before the war, will now be subject to exceptions.

Our conclusion, then, is that a substantial decline in the price level would be the largest single factor endangering the discharge of Germany's political and commercial obligations toward her foreign creditors. We can only hope that it will be possible, through coöperation between the central banks, through a gradual change in monetary habits and also, perhaps, through a change in the paying habits of the public, to prevent this fall of prices or, at least, to keep it within moderate bounds.

Having considered the factors determining Germany's capacity to pay, we may now sum up the conclusions which seem to be indicated. Germany's capacity to pay is, at present, a minus quantity but we may be reasonably certain that it will change into a plus quantity in the future. This change will be brought about through the upward trend in Germany's level of production. The cause of this upward trend will be technical progress aided by necessity and by the German genius for organization, counteracted by high interest rates, high taxes and

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the presumable decline of the price level in all industrial countries.

It is obviously impossible to foresee what the quantitative result of this battle of conflicting tendencies will be. Estimating Germany's capacity to pay at the present moment and fixing her reparation burden in accordance with this estimate is, therefore, tantamount to making a guess and a guess which, necessarily, will be intuitive rather than intelligent. No harm will be done as long as this fact is kept well in mind. The danger will come if the decision of the Committee of Experts on the total amount of German reparations is accepted as the final verdict of an economic providence subject to no further revision. It is doubtless necessary to fix the total of German reparations in order to clear the political atmosphere and to stabilize economic conditions in Europe. This having been done, however, the reparation problem should not be dismissed from the mind of the public and its leaders as a *res iudicata*. Another revision may become necessary should economic events fail to shape themselves in the way foreseen by the experts. Luckily, there are two circumstances which bid fair for a successful settlement of the reparation problem: the first is that it has been dealt with by a body of economists and financiers rather than by a body of politicians; the second is that the final verdict will be given by the investors of all countries who will approach the problem from the point of view of what they can safely invest in German bonds rather than how much they should exact from Germany according to their ideas of abstract justice.

Assuming now that the reparations imposed upon Germany remain within her capacity to pay, the question arises as to how their payment will be effected. In the past debtor nations have discharged their obligations toward their creditors by securing an export balance in their foreign trade and also by contracting new foreign loans.[1] To a large extent old debts have been paid off by incurring new ones. This may seem somewhat strange, but we have to consider that a perpetual in-

[1] *Cf.* Natl. Ind. Conf. Bd., *op. cit.*, p. 186, and tables on pp. 141, 155, 164.

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crease in a country's foreign indebtedness is far from being a cause for alarm, provided there is a corresponding increase in the country's wealth. If this is the case, an increase in foreign debts simply means that capital yields a higher return in the country than abroad and that it is, therefore, unprofitable to export the wealth produced.

Germany will, in all probability, follow the example of the other debtor countries. We may, then, expect her to have a modest export surplus in her commodity-balance of trade which, together with some "invisible" items (receipts from shipping, expenditures of foreign tourists, etc.) will take care of a part of her current reparation payments and of the interest payments due on her foreign commercial debt. The rest will be discharged by new foreign loans. As the years advance, the percentage of Germany's political and commercial obligations discharged out of a current surplus in her balance of foreign payments will presumably increase.[1] Her total debt will then remain more or less constant. A redemption of her foreign debt on any considerable scale could take place only if some emergency should increase the demand for goods on the part of Germany's creditors to such an extent that they would be obliged to dispose of their claims on Germany in order to pay for their imports. We need scarcely point out that this emergency is almost inconceivable except as the result of a new war, and for this reason we must sincerely hope that Germany may be spared the doubtful blessings of such a debt reduction.[2]

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[1] Angell, *op. cit.*, p. 334.

[2] In the second and concluding part of this essay, to be published shortly, the author proceeds with a discussion of the effects of reparation payments on business conditions.—ED.

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PARTY GOVERNMENT IN THE IRISH FREE STATE

THE members of the committee which drafted the constitution of the Irish Free State were all very suspicious of party government and party organization. This suspicious attitude did not derive from close study of the writings of Ostrogorski, Michels or Bryce, but rather from intimate personal experiences of the party machines of Ireland and the United States. The power of the party boss and the misuse of the Tammany organization in the United States were personally known to at least one member of the Drafting Committee, and the Irish affiliations of Tammany were known to all. Moreover, every member of the committee had personal, and often painful, experience of the party machine in Ireland. They had all known its rigidity, its local bosses, its stern discipline, and its use of the spoils system of rewards for services rendered. The rewards were, of course, infinitely greater in the United States than in Ireland: in Ireland they consisted mainly of local jobbery, petty profits from contracts, some little bribery, and a few honorary titles of distinction; all except the titles have been abolished since the Free State came to function. In the United States and in Ireland politics would seem to have been synonymous with pickings to most people, and as membership of the Constitution Committee was drawn exclusively from Ireland and the United States the "spoils" view of party organization was implicit in the constitution which was the outcome of their discussions. The Irish members of the committee had all been subjected to personal abuse and petty persecution because of the heterodoxy of their political opinions in days when the Irish Nationalist Party machine dominated the country's politics. Such epithets as "crank", "sorehead", "rainbow-chaser" and "snake-in-the-grass" had been commonly applied to them by the bosses of the United Irish League, and by the party organs in the press, for many years. They knew that a strong party organization meant in-

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evitably the suppression of independent political opinion, and they knew also that in its earlier stages certainly the Irish Free State would require more than anything else freedom of political thought and freedom of political expression. It was not in Nationalist Ireland only that suppression of political independence was common; it was no less a characteristic feature of the Orange and Unionist organizations in Northern Ireland, where they have now complete dominance owing to the partition of the country. The old party machine has kept its control there under the new conditions, and has made certain of the continuance of that control for many years by abolishing the proportional representation method of electing its Parliament. But in the Free State the old party and the old organizations had been swept out of existence at the general election of 1918, and the new currents of opinion had not been gathered into party organizations by the time the Free State came into existence in 1922. The old party had been discredited in every way, and the new movement of political idealists endeavored to avoid party domination.

Consequently the makers of the Free State constitution applied themselves to the task of keeping party government and party organizations under strict control and within defined limits. That is not to say that they tried to prevent the formation of political parties altogether, because in fact there is no reference whatever to parties in the constitution. The free expression of opinion, freedom of assembly, freedom of the person, and freedom of association, are all guaranteed by the constitution as fundamental rights, and, of course, there is under this guarantee complete freedom to organize and maintain political parties. It was in the methods of working the machinery of government that it was sought to confine and control the interference of party organizations. The Parliament (*Oireachtas*) consists of the king and two houses, a Senate (*Seanad*) and a Chamber of Deputies (*Dail*), and under the electoral system which operated until the year 1928 both houses were directly elected under the proportional representation system of the single transferable vote. For the Chamber (*Dail*) every person, without distinction of sex, twenty-

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one years old is entitled to a vote, and is equally eligible for election as a deputy. But election to the Senate was (until the recent amendments were passed) a more complex matter. For the Senate, under the original system, a candidate had to be at least thirty-five years old (now reduced to thirty) and must be deemed to "have done honour to the nation by reason of useful public service" or have "special qualifications or attainments" to "represent important aspects of the nation's life". Under the original system (which has now been amended) the candidate for the Senate had to be nominated by either house to a panel consisting of four times the number of candidates that there were seats to be filled before a constituency of the entire Free State voters thirty years of age and over had an opportunity of making a selection by proportional representation. Since the adoption of the constitution in 1922 there have been three elections for the Chamber of Deputies and two for the Senate. The first general election of deputies was in 1923, and in 1927 there were two within three months of each other; the first election of senators was held in 1925, when one-quarter of the house originally nominated had to retire and submit itself to the judgment of the electorate, and the second senatorial election occurred in December, 1928. The results in all five cases throw an interesting light upon the efforts of the constitution-makers to thwart party control in so far as the machinery of election is concerned.

In itself the single transferable vote system of proportional representation holds safeguards against undue party encroachment, inasmuch as it encourages every variant of political and social opinion to nominate candidates representing its own peculiarities. Experiments can be tried with impunity because if the candidate nominated secures such small support that any chance of election is hopeless the votes cast for him are not lost, as they would be under the "block-vote" system, but are transferred to the second, or later, preferences of the voters, thus making certain that if no representation can be secured for a peculiarity in politics a group large enough to control the executive can be supported. So it has happened that at all the elections to the Free State houses large numbers of candidates

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who described themselves as independents, but who were really representative of certain sectional, business or other interests, were nominated, and where they failed to secure election the second preferences were overwhelmingly in favor of the existing government. In the general election of 1923 there were seven definite party groups presenting candidates for election, in addition to a large number of independent candidates in every constituency, and the result of the election gave to independents 15 seats in a house of 153 members. In the earlier election of 1922, at which the main subject for decision was the constitution itself and the treaty upon which it was based, efforts had been made to preserve the *Sinn Fein* organization without division, but the negotiations for a pact broke down with the result that those for and against the treaty formed separate organizations, and the Labor Party entered the electoral struggle for the legislature. The result of the 1923 general election for the Chamber of Deputies is not of very great consequence, because the second largest group, consisting of nearly 50 deputies, refused to enter the Chamber, which in effect was thus reduced to little over 100 members, of which the government group alone accounted for about 60. Thus for four years the majority at the disposal of Mr. Cosgrave was more than adequate for all purposes.

The two general elections for the Chamber of Deputies held in 1927 are much more interesting for a study of the working of the system of proportional representation. As a consequence of the determination of the government to enforce the oath of allegiance at the time of nomination the *Fianna Fail* Party (Republicans) decided to take the seats it had won at the election in June and only the extreme Republicans (*Sinn Fein*) continued the abstentionist policy. This action placed the government in a minority of one or two in a full house, but when the actual test came with a vote of confidence the absence of one member made the voting equal and the casting vote of the chairman continued the government in office. The house was adjourned, and promptly the government advised the governor-general to dissolve it and order a new election. The constitutional aspects of this decision have never been adequately

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discussed, but a precedent was created which may have far-reaching consequences in the future. The following tabular statement will best illustrate the actual effects of the proportional representation system in the two elections of June and September, 1927:

Party	Seats won in June election	Votes cast in June election	Seats in proportion	Seats won in September election	Votes cast in September election	Seats in proportion
Government	47	314,684	43	62	457,565	60
Fianna Fail.....	44	299,626	40	57	411,570	54
Labor	22	143,987	19	13	107,637	14
Farmers	11	109,114	14	6	70,000	9
National League.	8	84,048	11	2	19,000	2
Independents ...	14	139,679	19	13	104,874	14
Sinn Fein, etc. ..	7	56,218	7	..	....	..
Totals.....	153	1,147,356	153	153	1,170,646	153

It will be noted that in the Irish Free State, as in other places where proportional representation is operative, the larger parties receive slightly more than their strictly proportionate share of the seats. This is accounted for by the moderate size of the constituencies, and the impossibility of transferring ineffective votes from one constituency to another. What is quite certain of the results of the system in the Irish Free State during a very severe trial is that every shade of opinion which had any considerable magnitude secured representation; there has been no suppression of minorities, and small groups have not secured any exaggerated importance. Had the block-vote, with single-member constituencies, been maintained in Ireland after the Free State began to function all the political troubles would have been emphasized, because it is quite probable that a minority of votes could have secured control of the government just as it has happened in Great Britain. For a time the Executive Council seemed to be dissatisfied with the system, and in the course of his exposition of policy prior to the election of June, 1927, Mr. Cosgrave indicated an intention to revert to the older system; but since then he has seen that pro-

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portional representation introduces a stability into politics which is essential in the formative years of a new state. The marginal difference between one election and another which can make such sweeping changes in English party politics under the block-vote system might well have proved disastrous for Ireland in the years from 1922 to 1927. Had the English system been operative in the Free State in September, 1927, it is not at all unlikely that the *Fianna Fail* Party would have secured a majority, as there was widespread opposition to a recent enactment of the government called the Public Safety Act, which virtually suspended the constitution under certain given conditions.

On the whole there can be no doubt that the proportional representation system has been of incalculable benefit to the Irish Free State, and so much is this now realized that opposition to it has completely subsided. Those who thought that its complexities would baffle a comparatively uneducated electorate have had their fears dispelled by the Senate election of 1925. In this election voters were confronted with a ballot paper containing the names of seventy-six candidates, yet 305,701 valid votes were recorded, and only 9,466 votes were spoiled. When the great difficulty of that election is considered, the very low percentage (three) of invalid votes must be specially recorded as showing that the system can be easily mastered by almost any electorate. In this election eighty-eight per cent of the votes cast were actually used in the choice of the nineteen successful candidates, and the first preferences of fifty-two per cent of the voters secured seats in the Senate. So the *Irish Times* could say in its comment upon the election: "Whatever the Senate election may have pilloried, it did not pillory the system of P. R. which has emerged very creditably from an exceedingly severe test." As some two months had to elapse between the date of the poll in this Senate election, and the date when the seats would be vacant, there was time enough to demonstrate the methods of P. R. in great detail. The newspapers published the placings of the candidates from day to day, showing the transfers of votes as candidates had surpluses or were eliminated. From this the electors could

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follow their own votes, and the various stages showed how votes were made operative in the most effective way. The whole system was accurately summarized by a candidate who had watched the entire process from within when he said: "P. R. acts as an introduction to civics". There is no doubt that the selection in successive elections of the candidates in a preferential order must inevitably increase the consciousness of citizenship, of effective participation in public affairs, and of the direct exercise of self-government. That P. R. has had this effect in the Irish Free State cannot now be disputed: an electorate which was thought to be dull and apathetic has proven just the contrary.

It is probable that the drafters of the constitution believed that the proportional representation system would result in the formation of a large number of groups in the two houses, and seeking, as they did, administrative efficiency rather than political dominance in the departments of state, they attempted to make every provision to that end. In the original draft constitution these provisions were clearly set out in article 50, which reads as follows:

> The executive authority of the Irish Free State is hereby declared to be vested in the King, and shall be exercisable, in accordance with the law, practice and constitutional usage governing the exercise of the executive authority in the case of the Dominion of Canada, by the Representative of the Crown. There shall be a Council to aid and advise in the government of the Irish Free State to be styled the Executive Council. The Executive Council shall be responsible to the Chamber (*Dail*), and shall consist of not more than twelve Ministers appointed by the Representative of the Crown, of whom four shall be members of the Chamber and a number not exceeding eight, chosen from all citizens eligible for election to the Chamber, who shall not be members of Parliament during their term of office, and who, if at the time of their appointment they are members of Parliament, shall by virtue of such appointment vacate their seats; provided that the Chamber may from time to time on the motion of the President of the Executive Council determine that a particular Minister or Ministers not exceeding three, may be members of Parliament in addition to the four members above mentioned.

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Only the president and vice-president of the Executive Council were, by the terms of this original draft constitution, required to be members of the Chamber. The other ministers were to be "chosen with due regard to their suitability for office and should as far as possible be generally representative of the Irish Free State as a whole rather than of groups or of parties". In the constitution as finally accepted, and still generally operative, however, it was provided that the total number of ministers should not exceed twelve, and of these not more than seven nor less than five were to compose the Executive Council. Ministers who were not to be members of the Executive Council were to "be nominated by the Chamber (*Dail*) on the recommendation of a Committee of the Chamber chosen by a method to be determined by the Chamber, so as to be impartially representative of the Chamber". The position of ministers who were not to be included in the Executive Council was thus set out:

> Every Minister who is not a member of the Executive Council shall be the responsible head of the Department or Departments under his charge, and shall be immediately responsible to the Chamber for the administration of the Department or Departments of which he is the head: Provided that should such arrangements for Functional or Vocational Councils be made by the Oireachtas (Parliament) these Ministers, or any of them, may, should the Oireachtas so decide, be members of, and be recommended to the Chamber by, such Councils. The term of office of any Minister, not a member of the Executive Council, shall be the term of the Chamber existing at the time of his appointment, but he shall continue in office until his successor shall have been appointed, and no such Minister shall be removed from office during his term otherwise than by the Chamber itself, and then for stated reasons, and after the proposal to remove him has been submitted to a Committee, chosen by a method to be determined by the Chamber, so as to be impartially representative of the Chamber, and the Committee has reported thereon.

These extracts show that the ideas of the original Drafting Committee were considerably altered and modified before the actual constitution was accepted and made operative. The

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Drafting Committee endeavored to include almost every device which has been put forward by political theorists for combining efficiency and continuity with a democratically representative régime. Thus in the administration the Irish Free State would have had personal responsibility, fixity of tenure, vocational councils, which in conjunction with the initiative and the referendum would have tended to place the entire control directly in the hands of the sovereign people, and would inevitably have reduced Parliament in time to a negligible factor in the political scheme. Every country in the world was called upon for something; for its ideas upon ministerial control and responsibility the Drafting Committee went to the United States. But as the political machine has actually functioned it has approximated more and more closely to the British parliamentary model. All the ministers have been, from the beginning, though they need not have been, members of Parliament, and a precedent was created from which departure in the future would have been difficult even had amendments not made it unnecessary. And even more significant was the fact that all the ministers belonged to one party in the Chamber. So despite all the well-laid plans of the drafters of the constitution there has been, in fact, a definitely party government in the Irish Free State from the very first day of its existence. It could not have been otherwise in Ireland, as the only political training that the Irish people ever had was in party methods and party organization. The excellent theories and the practices of other countries embodied in the articles of the constitution have been overborne by the facts and the realities of Irish political life, and the constitution of the Irish Free State has already been as much amended in five years as the constitution of the United States in a century.

The object of the constitution-makers was a "business government", composed of the very best administrators whom the nation had at its disposal. Ministers were to be chosen because of their qualifications and experience rather than their membership in the Chamber or their political connection. The Irish members of the Constitution Committee, at least, were fully aware of the inefficiency of many Irish services, and of the

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nepotism and jobbery that often passed as patriotic zeal. It was the intention to eliminate all that from Irish political life as quickly as possible, and as far as a written constitution could effect that purpose every safeguard in use in any country was availed of and inserted in the constitution of the Irish Free State. But political facts and events proved much too strong for political theory, and tradition stronger than paper. So long as there was only one party in Irish politics the constitution might have worked admirably, but when the cleavage came the constitution inevitably must change. From 1918 to 1922 there was only one party in what is now the Irish Free State; that party was loosely called *Sinn Fein*, and it undoubtedly had the great mass of national opinion behind it. When the "treaty", which was negotiated and signed in London in December, 1921, between Irish and British plenipotentiaries, came to be ratified by the Irish deputies, division was certain, and a new party alignment came into being. It is easily forgotten that the agreement with Great Britain was only accepted by the Irish representatives, sitting as the first *Dail Eireann* although elected to sit in the British House of Commons, by the very narrow margin of seven votes; the voting being 64 for acceptance and 57 against in a house of 121 members. After that division the minority left the house and did not again enter it until August, 1927. Thus two new parties were created, the majority calling itself *Cumann na nGaedhal* (the League of the Gaels), and the minority retaining the original name of *Sinn Fein* (Ourselves). *Sinn Fein* remained definitely Republican, demanding what it termed External Association with the British Commonwealth, while *Cumann na nGaedhal* accepted membership in the British Commonwealth and the oath of allegiance to the king. Since 1922 other cleavages have occurred, and new parties have been formed.

For the first Irish Free State general election in 1923 an effort was made to stereotype the old party strength by agreement between the two new groups, but the agreement was broken and the two groups fought each other at the polls. It was at this election that the Irish Labor Party entered national politics as a distinct entity, and another new party was created

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by the entry of the Irish Farmers' Union into politics. Thus in the first general election there were four clearly defined parties, each with a definite policy, in addition to a large number of independent candidates. The dominating issue of the election was the "treaty", involving the status of a Dominion in the British Commonwealth and an oath of allegiance to the British king as head of that Commonwealth, and practically nothing else was considered, although the Labor and Farmers' parties both concentrated upon economic issues. The result showed that 109 members had been elected to support the "treaty", and 44 against it. The 44 members did not take their seats in the Chamber, and so the House which laid the foundations of the new state consisted of only the 109 members who favored acceptance of the "treaty". The provisional government presided over by Mr. William Cosgrave remained in office, merely shuffling the portfolios, and the Labor Party under the leadership of Mr. Thomas Johnson became the official opposition. The House was composed of 54 *Cumann na nGaedhal* members, 11 Labor, 17 Farmers' and 17 Independent members. Thus Mr. Cosgrave had a safe majority of 19 over all other groupings, and as he could also count upon the general support of the Farmers and the Independents his power was overwhelming in the years from 1923 to 1927. Party groupings in the Senate do not matter very much, as the Senate has only power to delay ordinary legislation for a short time, and has no power whatever in finance.

It was when the time came for the nomination of the ministers that the party alignment of members really showed itself more powerful than the articles of the constitution and the intentions of the constitution-makers. The Committee of the House was duly appointed as the constitution directed, and it, of course, consisted of a majority of the government party. No radical changes were made: the Executive Council lost two of its members by resignation after a quarrel with the Council about discipline and administration in the army. The extern ministers, as those who are not members of the Executive Council are named in the Constitution, were all renominated and held their portfolios throughout the Parliament. No

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person who was not a member of the majority party was nominated; neither was anyone who was not a member of the Chamber. No members of the Senate were thought worthy to hold portfolios; indeed the suggestion that senators should be eligible for ministerial office was resented by the then vice-president of the Executive Council, the late Kevin O'Higgins. The abstention of the 46 Republican deputies gave the government a fictitious majority and made domination by a single party possible at a very critical moment in the constitutional history of the Free State, and it is highly probable that the precedent then established will be followed by all victorious parties in the future. Had the Republican members been in attendance, and represented proportionately upon the committee which nominated the extern ministers, there can be no doubt that more attention would have been given to the spirit of the constitution, and that some of the extern ministers would have been chosen from minority groups, any of which could have produced excellent candidates for the positions. Had the intentions of the constitution-makers been heeded, the composition of the ministry, outside the Executive Council, would have been very different, and it is probable that the party system would not have become quite such a prominent feature in the political machinery of the Free State.

That is not to say that the work of the ministry would have been any better, or that the standard of ability would have been higher. There is no doubt that Mr. Cosgrave's first ministry served the new state magnificently in its formative years, and that it placed solid foundations upon which future ministries may build with confidence. In 1922 an armed revolt had to be suppressed at great cost in lives, money and buildings, and it was not until after the general election of 1923 that economic, social and political affairs could be dealt with. The two most important factors in the life of any state are security and finance, and to these the two most capable ministers gave full attention, Mr. Kevin O'Higgins at the ministry of justice and Mr. Ernest Blythe at the ministry of finance. Unfortunately the bullet of an assassin deprived the state of the services of Mr. O'Higgins in July, 1927, but by that time he had given

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the country a splendidly organized and disciplined police force and a competent judicial system.

To Mr. Blythe's department was given the heavier burden of securing the national finances, while at the same time paying adequate compensation to all who had suffered loss in the armed insurrection of 1922. Not only has all the compensation been paid, but much new work has been undertaken and financed. Two national loans have been successfully floated in Dublin and New York, large sums have been expended in providing new roads, thousands of houses have been erected in the towns, taxation has been reduced, long-term credits have been placed at the disposal of farmers, the great hydro-electrical scheme on the Shannon has been contracted for, a sugar-beet industry has been subsidized, industry has been stimulated by a subsidized Finance Corporation, a Currency Commission has been set going, and a new currency is about to be introduced; and despite all this the national budget is balanced and the national finances are in an exceedingly healthy state. An "adverse" trade balance is being slowly and steadily reduced, and the country is reaching a time when its exports will probably exceed its imports. The greater part of the credit for this must be given to the minister for agriculture, Mr. Patrick Hogan, who reorganized the agricultural economy of the country in a radical manner. Irish agricultural produce is now graded and packed in a most engaging way, and only the highest grades are permitted to be exported. The consequences of this policy are higher prices and expanding exports. Local government, too, has been overhauled and the pernicious Poor Law system of workhouses abolished; but in this department much yet remains to be done. In the sphere of politics proper, the Irish ministry for external affairs has done much to clarify the meaning of "Dominion Status", and the great work of the Imperial Conference of 1926 was largely imitated by the Irish Free State representatives; the famous so-called "Balfour Memorandum" owes more to the late Kevin O'Higgins than it does to Lord Balfour, who presented it to the Conference by virtue of his presidency of the committee. The Irish Free State, too, was the first Dominion to appoint min-

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isters in foreign capitals, and to accept candidature for a seat in the Council of the League of Nations. The Dominion of Canada followed, and actually won a seat in the Council.

This whole question of "Dominion Status" has been one of the formative forces in the Irish party system. The Irish people as a whole favored the "treaty" mainly on the understanding that "Dominion Status" was to be used as a "stepping-stone" to the achievement of complete independence. The government of which Mr. Cosgrave is the chief has talked little of this policy, but the party of Mr. de Valera has made it a main objective. Neither party can afford to ignore popular expectations, and consequently the question must be pressed to an issue sooner or later. Already it would seem that the greater part of Mr. de Valera's ideal of "external association" had been achieved; the Dominions now rank equally with Great Britain in the councils of the Commonwealth, they appoint their own ministers to foreign capitals, are independent in the League of Nations, and are in no way subordinate to government departments in London, each Dominion government being responsible to the king alone in his strictly constitutional capacity.

The substance of "external association" has been won, but Mr. de Valera's party has concentrated upon the oath of allegiance to such purpose that the constitution of the Irish Free State has now lost its articles on the initiative and the referendum. Having been compelled to take their seats in the Chamber by an act making the oath of allegiance compulsory at the time of nomination, and another declaring seats vacant which had not been claimed within a specified time after election, Mr. de Valera's party set about making the initiative operative. The requisite petition was presented to the Chamber and referred to the Committee on Privilege, but meantime the government introduced legislation abolishing both the initiative and the referendum.

At the same time the Senate was subjected to overhaul: election will in future be by the membership of both houses, voting according to proportional representation by a postal ballot. Nomination to the senatorial panel will in future also

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be by both houses, a number of candidates equal to the number of seats to be filled to be nominated by each House. The duration of membership is reduced to nine years instead of twelve, and the minimum age for candidates reduced from thirty-five to thirty years.

The first senatorial election under these new rules was held in December, 1928, and it was, as expected, simply a trial of strength for the parties in the *Dail*. Candidates were nominated by parties, the panel was a strictly proportionate reflex of party numbers, and the new senators were almost all pledged supporters of one or other of the three main parties. The Farmers' Party, having merged itself in the government majority, ceased to be a factor, but for the first time the *Fianna Fail* Republicans nominated candidates and elected four senators. One interesting side light on the election was furnished by the ability of the Republican party managers to manipulate proportional representation better than the managers of the other parties: so the Republicans secured four seats, while Labor secured only one by the election of its ex-leader in the *Dail*, Mr. Thomas Johnson. The Senate is now as closely subject to the party whips as the other house.

All these changes were definitely partisan in origin, as was also President Cosgrave's decision after the general election of September, 1927, to nominate all the members of his ministry to the Executive Council, which would have entire collective responsibility for policy and administration. This step was justified by the argument that as finance controlled all departments it was essential that all should be represented in the council which controlled finance. Some of these constitutional changes have been undertaken in a spirit of party domination, and for the purpose of party advantage, and have been passed through the Chamber with a minimum of discussion by the ruthless use of a party majority. Until December, 1930, the constitution may be amended by Parliament, that is for eight years after the proclamation of the constitution in 1922, and after that all amendments must be submitted to the people by referendum. It cannot be said that this power has been used with either wisdom or discretion by the Executive Council, and in the course

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of the amending discussions passions have often been aroused which will not die down easily. But more dangerous, and disturbing, for the future is the lack of respect with which the constitution has been treated, as a mere party issue in a passionate house. The suggestion that the whole matter should be referred to a committee which would reëxamine the constitution in the light of experience, and submit reasoned amendments where they were found to be necessary, was scouted by the government. When behind all this is the disturbing suggestion that another amendment will be produced, making Parliament competent to amend the constitution in perpetuity, it will be seen that the security so dearly won by years of civil commotion and sacrifice is by no means assured of continuity. Many parliamentary precedents have been created by Mr. Cosgrave in the heat of party battle which will serve Mr. de Valera well in any future revolutionary adventure which he may decide to undertake. As things are, if Mr. de Valera assumed office he could plunge the country into chaos within twenty-four hours without being unconstitutional or doing anything unprecedented. This is the great danger which has arisen from the party control of the business of the Irish Free State; it could never have arisen had the spirit and the letter of the constitution been adhered to rigidly. However, it is now too late to retrace the steps that have been taken.

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FACTORS IN THE CHINESE SITUATION

DR. SUN YAT SEN, the venerated leader of the Chinese Revolution, predicted in his *Three People's Principles* that China would pass through three stages in its evolution toward assuming a place in the family of nations worthy of its importance, viz: the Period of Military Supremacy, the Period of Political Tutelage, and the Period of Constitutional Administration. After the success of the Northern Punitive Expedition last summer in taking Peking, the fourth meeting of the State Council was held on Friday, October 26, 1928, with President Chiang Kai-shek in the chair. A manifesto was issued stating among other things that the Period of Military Supremacy had been brought to a close. This offers a reasonable time to consider the factors that combined to produce the chaos that has existed since the overthrow of the Manchu dynasty in 1911 and the manner in which the future must be viewed if the evolution predicted by Dr. Sun Yat Sen is to be realized.

To the Western reader of the news from China during the past decade who was unfamiliar with Chinese history, the chaos that existed was sufficiently explained by the Revolution itself, the Civil War between North and South, the existence of the Tuchuns and their armies and the interference of foreign powers. As a matter of fact, all these are accompaniments of that chaos, not primary causes. The causes are of deeper significance and are of a more spiritual nature. In analyzing them the student will discover that China's evolution has been similar to that of Europe, but that China has been compelled in three decades to face situations and solve problems that have required as many centuries for Europe to solve.

The remarkable movement in western Europe known as the Renaissance was what its name indicates, a rebirth. It was a rebirth of an old, long-forgotten way of looking at life, the way of pagan Greece and Rome. To the Greek and Roman, life

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on this earth was the one thing worth while. Death meant the passage to a dark, cold, cheerless existence. Hence the desire to get as much as possible out of this life. The body as well as the mind, the senses, emotions and intellect as well as the will, were to be cultivated. "*Homo sum; humani nihil a me alienum puto*". That saying of Terence summed up the attitude of the ancient pagan toward life. Man and his works, art, literature, philosophy, science were the things worthy of man's attention. The pagan era was succeeded by the Christian era with its doctrines of the fall of man and his evil nature. Christianity, as taught in the Middle Ages, predicted the emptiness of the earthly life and the joys of the other world, of heaven, the abode of those who had despised the body and had conquered its cravings. When the Renaissance, the rebirth, took place, men naturally turned with avidity to the literature dealing with man and his works, i. e., to the literature of Greece and Rome, which now became the content of the New Learning. The humanities were arrayed against the divinities. The pursuit of the New Learning often played havoc with men's thoughts and conduct. Opinions on nearly all subjects were unsettled, particularly on the subject which had hitherto dominated the entire life of man, religion. Moral restraints were loosened and license in conduct often held sway. But the New Learning was one of the greatest gains to humanity. It freed the human spirit from the trammels of a thousand years and started man on his evolution to his present state of culture.

The China of today has been invaded by a New Learning—Western culture. The essential element of Western culture is science. Science is based on a refusal to accept anything upon authority. It has no reverence for tradition. Investigation to get the facts and to be guided by them regardless of preconceived ideas is its chief characteristic. One can readily see what havoc the introduction of such learning would make in Chinese life. For nearly three thousand years the whole of Chinese civilization was founded upon authority, the authority of the ancestors. To such an extent was this true that ancestor-worship had become the very core of Chinese culture. The views of the ancestors as given in the classical literature be-

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came the sole material of education. The perfect reproduction of those views without a single variation was the aim of learning. The scholar who could accomplish this best was sure of high reward, of influential position in the mandarinate. To the Chinese, the continued existence of his civilization during a period that had seen the rise and fall of so many other great civilizations was the evidence of the wisdom of maintaining and continuing the conservative attitude of mind that accepted the traditional views of life handed down from ancestors.

The attitude of the Chinese toward the rest of the world previous to the late nineteenth century is best shown in the mandate of the Chinese Emperor Chien Lung to George III as the result of the Macartney Mission of 1793.

> You [George III], O King, live beyond the confines of many seas. Nevertheless, impelled by your humble desire to partake of the benefits of our civilization, you have despatched a mission respectfully bearing your memorial . . . I have perused your memorial: the earnest terms in which it is couched reveal a respectful humility on your part, which is highly praiseworthy. . . In consideration of the fact that your Ambassador and his deputy have come a long way with your memorial and tribute, I have shown them this high favour and have allowed them to be introduced into my presence. To manifest my indulgence, I have entertained them at a banquet and made them numerous gifts. . . . As to your entreaty to send one of your nationals to be accredited to my Celestial Court and to be in control of your country's trade with China, this request is contrary to all usage of my dynasty and cannot possibly be entertained . . . If you assert that your reverence for our Celestial dynasty fills you with a desire to acquire our civilization, our ceremonies and code of laws differ so completely from your own that, even if your Envoy were able to acquire the rudiments of our civilization, you could not possibly transplant our manners and customs to your alien soil. Therefore, however adept the Envoy might become, nothing would be gained thereby.
>
> Swaying the wide world, I have but one aim in view, namely to maintain a perfect governance and to fulfil the duties of the State: strange and costly objects do not interest me. If I have commanded that the tribute offerings sent by you, O King, are to

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> be accepted, this was solely in consideration for the spirit which prompted you to despatch them from afar. Our dynasty's majestic virtue has penetrated into every country under Heaven, and Kings of all nations have offered their costly tribute by land and sea. As your Ambassador can see for himself, we possess all things. I set no value on objects strange or ingenious, and have no use for your country's manufactures.

It can be readily understood, therefore, why, during almost the entire nineteenth century, with the exception of the uninfluential farmers and small shopkeepers who accepted Christianity, the Chinese regarded Western education with indifference when not with disdain. But in 1895 great China, which had always regarded the Japanese as an inferior people, was defeated in war by Japan. After the event, the reason for the victory was obvious to the Chinese. Subsequent to the Revolution of 1868 which resulted in the overthrow of the Shogunate in Japan and the restoration to power of the Emperor, the Japanese deliberately studied Western civilization to discover in which of its elements lay its strength. They discovered that it was science. Administrative science made the Western nations strong politically; physical science made them strong industrially; military science made them strong internationally. Japan therefore imported teachers from Europe and America to introduce Western education, particularly science. Her victory in the war with China was her reward. Wrested from their attitude of superiority and contempt by the shock of disillusionment, many Chinese demanded that their educational system be reformed and that the elements of Western culture, and particularly science, be introduced. The movement was started even before the fall of the Manchus, and, after the establishment of the republic, practically the whole of the old learning was discarded and the Chinese feverishly undertook the rapid assimilation not only of science but of most of the elements of Western culture.

But to do so was to shake the very foundations of Chinese civilization. The spiritual life of the Chinese people, their traditions, their beliefs, their ideals, were embodied in the

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classics. The classics taught that the whole social system is founded on the family, in which the entire control is in the hands of the father. Western civilization exalts the individual. In China the individual counts for little. Even outside the family the individual has rights only as a member of a guild or some other kind of fraternity. To exalt the individual was to aim a blow at the whole social system. To reject ancestor-worship was to loosen the moral bonds which were founded upon it without replacing them by the control of the individual conscience as in the West, for that control was the product of centuries of development in the West. Since the Great War there have been three schools of thought in China with regard to the extension of Western culture. A very small group of the older scholars would return to the native education of the days previous to the Japanese war. At the other extreme is a much larger group that believes that the salvation of China depends upon the ruthless uprooting of all the elements of the old culture and the substitution of that of the West. In more recent years a group of fine spirits led by Dr. Hu Shih have organized what is called the Renaissance Movement. Their movement has for its aim the retention of the best elements of the old culture and the assimilation of the best elements of Western culture in the newly developing civilization. The movement is making headway among thoughtful people.

The Industrial Revolution, which began in England a short time before the American Revolution, measured by results, was one of the greatest movements in human history. The material aspects of civilization have changed more since its inception than in all the centuries that preceded it. Despite attendant evils, the movement benefited mankind. It released man from performing tasks where brute strength was needed, turning them over to the machine and giving him greater opportunity for mental and spiritual development. Nevertheless the movement was attended by evils. It resulted in the congestion of population into cities where practically no preparation had been made from the standpoint of housing and sanitation. The hours of labor in the new factories were long, wages were low, conditions of work bad as to lighting, adequate room and safety

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appliances. Until the rise of the labor unions, the working people were without protection against exploitation, for law necessarily lags behind changes in social conditions. The investigation of the Shaftesbury Commission which resulted in the passage of the Factory Acts of 1833 discovered horrible conditions in mines and factories. Those acts were the first of a great many that aimed to raise the working population from the debased condition to which it had been reduced.

The twentieth century has seen the factory system transferred to the great cities of China, and China was even less prepared for it than was eighteenth-century England. Chinese industry had always been carried on by families organized into guilds. In any great city of China even today one can walk down one street given over to brass workers, another to silversmiths, another to workers in wood or leather. And in another part of the same city will probably be found the symbol of the Industrial Revolution, the great factory engaged in mass production of machine-made goods. The beautiful products of the handicrafts of China are in danger of being supplanted by machine-made articles. However, it is not the aesthetic effect of the introduction of Western industrialism that is the most pronounced. It has had practically all the evil results that accompanied the breakdown in England of the domestic system of industry and the introduction of the factory system. The exploitation of women and children as sources of labor supply is equal to anything that happened in England. The factory employs individuals, not families, individuals who frequently leave distant homes to work in it. There is no Sabbath in China and practically no holidays except the long holiday period at New Year. Many workers are, therefore, released from the rigid restraints of the family and fall into evil ways. The factory system of the West, like the scientific education of the West, has dealt a blow to the family foundation of Chinese civilization. Moreover, Chinese law and administration provide as yet no protection for the workers against exploitation.

The factory system in China has had accompanying it one evil from which it has been free in the West. In the West it has arrayed employers and workers against each other in an

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economic struggle as to the share each is to have in the profits of industry. In China there has been added to the economic struggle a race issue. In many cases, the employers are foreigners and the workers natives. In the agitation of the past few years directed against foreign interference in the affairs of China, the leaders have nearly always been students, the mass of the followers have been laborers. It ought to be mentioned in passing, however, that the evils mentioned above have been far more pronounced in factories owned by Chinese than in factories owned by foreigners. Nor is there much likelihood of a diminution in the future of the disintegrating influence of the factory system upon the social life of China. The demand for tariff autonomy made by the Chinese leaders is not merely to enable China to secure more revenue. They frankly avow that China must become a self-sufficing nation through the development of her own industries. To compete with other nations in the industrial field, China must wholeheartedly adopt the factory system.

The twin products of the French Revolution, Nationalism and Democracy, were sent flaming across Europe by the revolutionary armies, rousing men as never before to heroic actions in the name of the new patriotism. Up to the Revolution, loyalty in continental Europe was to the ruler. The Revolution transferred it to the nation. Everywhere on the Continent great communities of people bound together by common traditions, ideals and aspirations expressed in a common language demanded the right to form national states. An entire century was necessary for the final realization of the principle of nationalism. First, great groups like the Germans and Italians were successful. A little later, the Balkan peoples, Greeks, Rumanians, Bulgars attained nationhood. Then with the disappearance of the Hapsburg monarchy and the overthrow of the Romanov dynasty, Poles, Finns, Czechs and other peoples that had been submerged reappeared as national states. Today, the principle of nationalism is the one most dominant in the political consciousness of all European peoples. In most cases it has been accompanied by the principle of democracy, though by no means with the same degree of devotion.

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Up to the twentieth century, patriotism in the modern sense, i. e., loyalty to the nation, was practically unknown to the Asiatic peoples. In Turkey, loyalty was to the religion, in India to the caste, in China to the local community. The individual Chinese was little interested even in what took place in the neighboring province. The great mass of the Chinese never conceived of China as an entity. The average foreigner resident in China during the nineteenth century despised the Chinese for what he considered their lack of patriotism. The rise of nationalism in China is a twentieth-century product. It began about the same time that John Hay proclaimed the doctrine of the Open Door as a protest against the partition of China among the European Great Powers. The more intelligent of the Chinese saw that the partition meant that all the resources of China were to be exploited by the foreigner for his own benefit, not for the benefit of the natives. The Boxer Rebellion of 1900 was the blind, instinctive outburst of hatred against the foreigner, the first evidence of a collective movement among Chinese generally. The revolutionary movement of Dr. Sun Yat Sen for the overthrow of the Manchu régime which resulted in the Revolution of 1911 showed that the spirit of patriotism had made great progress during the intervening decade. But the outrageous conduct of the Japanese in China during the World War, China's entrance into the War as a sovereign state on the Allied side, largely as the result of American prompting, the bad treatment China received at the Paris Peace Conference in spite of the promises made to her—these were the things that decided the politically-minded Chinese to undertake a deliberate, intensive campaign for the development of a spirit of nationalism among the Chinese people. The Kuomintang or Nationalist Party was formed having for its avowed objects the unification of China and its liberation from all foreign interference. The Mass Education Movement was an important step in this campaign. From the many thousands of ideographs, Chinese scholars selected the thousand characters most frequently used in the vocabulary of ordinary people as a basis upon which to work in order to reach the masses of the people. The Mass Education Move-

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ment has avoided politics and the thousand-character booklets are simple reading primers. But that fact has not prevented many pamphlets written in these characters from being extremely nationalistic, explaining the evil nature of the unequal treaties, tariff subjection and extraterritoriality. Students swarmed over the entire country gathering the peasants together in abandoned temples and elsewhere to be taught the new characters and the new nationalism. Finally the Shanghai riot of May 30, 1925, in which students and laborers were killed by the foreign police of the city, was the most unifying single incident of the entire nationalistic movement. It was the Lexington in the war of independence against foreign interference, a war which was finally won but yesterday, a war in which nationalism emerged triumphant. It must never be forgotten, however, that nationalism in the East differs from nationalism in the West in one great respect: nationalism in the West is aggressive; in the East, it is defensive. In the West it aims at territorial expansion, or economic exploitation, or cultural superiority. In the East, it aims to retain control of the economic resources of a country for the benefit of that country and to prevent the country from being placed in a position of international inferiority.

The Renaissance in Europe, introducing the New Learning, dates from the early fifteenth century; the Industrial Revolution, bringing in the factory system, from about the year 1760; the French Revolution with its twins, nationalism and democracy, from 1789. The latest has been operating five generations. In a single generation, Western culture, the factory system and nationalism have been almost simultaneously thrust upon the people of China, a people wholly unprepared for any one of them. Disintegration resulted in almost every aspect of life. The abandoned temples scattered throughout the country are mute witnesses of the decay of religion and of ancestor-worship, the very foundation of the whole social system. The ruined examination cells tell of the passing of the old learning upon which the moral life of the people was founded. The disappearance of the guilds, the rise of labor unions, strikes, riots and boycotts explain the radical changes that have taken

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place in the industrial life of the people. Civil war, brigandage, the freedom of the provinces from any central control and the existence of the large independent standing armies under military leaders have given evidence of the political disintegration that has taken place since the Son of Heaven was driven from his throne in 1911. Moreover, during that generation the Chinese people have not had the opportunity to work out of their confusion in the ways they adopted during the former crises in their long history. Then they were isolated and could use the measures with which they were familiar to restore order and stability. During the past generation they have always been subject to the interference and intrigues of foreign powers which did not consider it to their interest to have China emerge from her weakness as a unified and stable nation.

When the Great War broke out in 1914, the strangle hold which Great Britain, France, Germany, Russia and Japan had upon China, resulting from the existence of spheres of interest and spheres of influence, foreign settlements and concessions, extraterritorial privileges, and foreign control of the Chinese tariff, seemed to reduce China to a position of permanent inferiority. The war at first threatened increased evil to China but was really the turning-point toward a brighter day. As a result of entering the war on the Allied side China secured a place at the Peace Conference, and though she obtained no redress of grievances, she won almost universal sympathy by her exposition of the evils of foreign interference and especially of the evil nature of the Twenty-One Demands made by Japan during the war. Three years later, at the Washington Disarmament Conference of 1922, China obtained a real victory. The Nine Power Treaty was signed whereby she was guaranteed her sovereignty, independence and territorial integrity. Moreover, partly owing to the collapse of the Russia against which the Anglo-Japanese Alliance of 1902 had been formed, but also largely owing to the urgency of Canada and Australia, which sympathized with the United States in its attitude towards Japanese immigration, Great Britain agreed to allow the Anglo-Japanese Alliance of 1902 to be supplanted by the Four Power Treaty between Great Britain, the United

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States, France and Japan, whereby each was guaranteed in the possession of its territories in the Pacific. Moreover, Japan, finding herself isolated at the conference and an object of general suspicion, agreed to return to China the province of Shantung, which Japan had taken from Germany at the outbreak of the War. Finally, all the Powers assembled at the Conference agreed that further conferences should be held to consider questions that remained at issue between them and China. Spheres of interest and spheres of influence had been discarded but extraterritoriality, tariff autonomy and concessions remained to be considered.

Four years passed before the projected conferences were held. The prolonged delay was due to the dilatory tactics of one of the European signatories, France, in a controversy with China not greatly to French credit. Finally, in 1925 the Special Tariff Conference met, and in 1926 a Commission on Extraterritoriality convened. At both conferences agreement was reached upon important points at issue but the conferences adjourned without coming to a final decision. This was due to several causes. The foreign delegates had been accredited to the Peking government which was in a process of disintegration, unable to maintain order and to represent China as a whole. The Nationalists at Nanking gave public notice that they would honor no agreement made with the Peking government. By the time the conference had assembled, nationalism was rampant in China. Two events had taken place which greatly stiffened the attitude of the Chinese Nationalists towards the Powers. One was the cavalier manner with which the Turkish Nationalists had treated the Powers and practically compelled them to sign the Treaty of Lausanne. The other and more important event was the offer of Bolshevik Russia actively to support China against the other Powers.

From the standpoint of China's unity and independence, the Bolshevik Revolution in Russia was a real benefit. Had Russia remained Tsarist, what was accomplished at the Washington Disarmament Conference would probably not have been possible. During the war, Tsarist Russia and Japan were allies and had agreed upon common action in China looking to its

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permanent subordination. When Bolshevik Russia was thrust out of the family of nations and treated as a pariah, she placed at the disposal of the Chinese all her remarkable resources of propaganda. This she did partly out of a spirit of revenge though primarily out of a desire to realize the world revolution. The vague anti-foreign movement of the Chinese was now directed toward specific objectives, chiefly against British interests and prestige, for the Bolsheviki looked upon Great Britain as their worst enemy. By means of the boycotts, British trade was made to suffer terribly. Russian military leaders helped reorganize the Nationalist armies and Russian civil officials, under the direction of Michael Borodin, guided the actions of the Nationalist government in such a way as to produce a maximum of friction with the Powers. Hence when the conferences looking to a solution of the problems of tariff autonomy and extraterritoriality were held at Peking in 1925 and 1926, the representatives of the Powers found the Chinese in a truculent mood, and the conversations closed without result. Subsequently, the Chinese took advanced ground. By the Treaty of Versailles, the defeated Powers were deprived of all their special privileges in China. After the War, Russia voluntarily gave them up. When the treaty that existed between Belgium and China was about to expire in 1926, China announced that as "unequal" treaties with other countries expired they would not be renewed except upon a basis of equality and reciprocity, and she has carried out that policy in the case of the countries whose treaties have since terminated their period of existence. In the meantime, the event long hoped for by the Chinese and considered almost impossible by foreigners was consummated, viz. the capture of Peking by the Nationalists and the completion of national unity. Moreover, this was accomplished without the aid of the Russians, who had a few months before been summarily dismissed, partly because of the consequences of the Nanking outrage which brought China in conflict with the United States as well as with Japan, Great Britain and other European states. The realization of national unity was followed by the announcement on the part of the Nationalist government that tariff autonomy would be

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resumed by China on February 1, 1929. Shortly afterward, the United States accepted the Chinese position in a tariff treaty, thereby according recognition to the Nationalist government. She was followed by Great Britain and other European states. Japan has most to lose by tariff autonomy on the part of China, which is her greatest market for manufactured goods. She had hoped to bargain by yielding on extraterritoriality which is of less importance to her than tariff autonomy. Hence she at first announced her refusal to accept the Chinese statement. But as all the Great Powers except herself gradually accepted, there was nothing for her to do but accept also. She had not forgotten her previous experience with the working of the boycott.

The Kuomintang is today naturally and justifiably filled with a feeling of patriotic exaltation. Two years ago North and South were at war with each other, almost every province was controlled by a military leader at the head of an army entirely independent of any central control, the Kuomintang itself was rent by internecine struggles between Communists and anti-Communists, the Nationalist government could rely upon few steady sources of revenue, but rather upon such as it could requisition, and during that period it was at odds with foreign governments and even in military conflict with the Japanese in Shantung. Certainly to have unified the country under such conditions, unstable as is the unification, is a remarkable accomplishment. The nationalistic objective of the Revolution of 1911 has been realized.

But the Revolution of 1911 was a democratic as well as a nationalistic movement. With the passage of time, however, the democratic aspect has more and more faded into the background. The Chinese local community, and up to the twentieth century that has meant the real China, has always had democratic elements, i. e., the local community determined its internal affairs without reference to the national government. The imperial régime was a very decentralized form of government whose chief function was the gathering of taxes, chiefly in kind, to support the court at Peking. In the administration of the central government the path was open to the highest

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preferment according to merit as tested by competitive examination. But democracy in the Western meaning of the term with its concomitants, constitutional and parliamentary government, is something with which the Chinese have had no experience. The introduction of democratic political government in 1912 resulted in confusion and increased corruption. During the period of chaos that has since existed it has disappeared. Were the Chinese true to their ancient traditions, the Manchu dynasty would be succeeded by another. But unless all signs fail, the hope of an imperial régime died with the failure of Yuan Shi-kai to found a new dynasty in 1915. The new constitution of the unified China, the Five Power Constitution, has recently been promulgated.

The constitution and the government organized under it are the creation of the Kuomintang or Nationalist Party. The Executive Council of the party elected Chiang Kai-shek as President of China, and organized the five councils and the cabinet of ten ministers. It is evident that the Kuomintang, like the Fascisti in Italy and the Bolsheviki in Russia, intends that China's new government, for some time at least, is to be a one-party régime. It is modeled on the oligarchic system of Russia rather than on the personal dictatorship of Italy. "Future activities will center around the Five Yuan as the pivot of the Political Tutelage campaign" proclaims the manifesto of the Nationalist government of October 29, 1928. And the Five Yuan are manned by the leaders of the Kuomintang. The Kuomintang bears the same relation to the Nationalist government of China that the Communist Third International bears to the Soviet government of Russia, or the Fascist Party bears to the government of Italy.

The problems that confront the new government are almost terrifying in their number and complexity and they will surely test the capacity of the Chinese leaders. The new government really exists upon the sufferance of the military leaders. At the date of writing, June 1, 1929, announcement has been made by the Nationalist government at Nanking that the military chieftains have agreed to cut the number of troops in half, i.e., from almost two to less than one million soldiers. Still more

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difficult will be the problem of the support of the hundreds of thousands of men thus disbanded whose sole vocation for a decade has been that of the soldier or the bandit. The motive power of the Nationalist movement has been the enthusiasm and faith of the students and the youth of the country generally. How hard it will be to transform that high emotional fervor into a willingness to engage in the drab, humdrum work of economic and industrial reconstruction, the experience of the Irish after the Free State was established well illustrates. Economic reconstruction in a country like China depends primarily upon means of transportation of produce and food to and from markets. But the few railroads that existed have almost been ruined during the wars since 1911 and roads of a kind needed for modern industry are almost unknown. The control of floods and of their resultants, famine and disease, has hardly been attempted, yet their victims are numbered by the millions. If China is to survive in the world of today in competition with other nations, it must develop its machine industry but must do it in a way that will not bring disaster upon the millions of handicraftsmen who would be thereby displaced. Roads and railroads, public health and sanitation, port facilities and reforestation, schools, hospitals, libraries and the many other attributes of a modern state, practically all of which are in their infancy in China, require money to develop and maintain. To secure the necessary money not only must scientific methods of revenue production be introduced and a balanced budget established but large loans must be secured from foreign sources. But foreign loans will not be forthcoming unless in addition to a stabilized political régime and a sound system of taxation, money and banking, the legal system of China is in reality brought into conformity with modern ideals of justice and judicial procedure.

Has China a sufficient fund of leadership to confront optimistically these and the many other problems that exist? The Manchu régime was corrupt and honeycombed with grafters. The successive régimes since its downfall have been little better. In Chinese political life today there are a few outstanding men of probity and integrity, but pathetically few. The

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majority are concerned chiefly with a scramble for place and profit. In the West the great force for maintaining restraint upon official dereliction is the force of public opinion. To develop public opinion requires not only time but a literate people interested in public affairs. None of these conditions has hitherto existed in China. For the present, China must rely upon educating men of character for leadership—and that takes time also. But the events of the past two decades justify the hope and belief that she will succeed. The manner in which the Nanking government is confronting its difficulties gives evidence of vision and courage among its leaders. It has drawn up and is in process of enforcing a program for the industrial development of the country which shows a grasp of the realities of the situation. It has invited a commission of experts from the United States to stabilize its currency, balance its budget and place it upon a sound financial basis. It is attempting loyally to realize the program of the Swiss commission for the modernization of the legal system. Few revolutions in history have brought to the top as leaders finer men than the group of patriots who control the destinies of China today. It is a source of pride on the part of Americans that six of the ten portfolios should be held by men who received their higher education in American institutions.

Beginning with about the year 1500, the white man expanded from his own little habitat in western Europe, conquered the whole of North and South America, Africa, Australia, and a large part of Asia and assumed the overlordship of nearly all the remainder of the earth. Up to the twentieth century little Japan was the only other nation that did not live upon the sufferance of the white man. Moreover, during this period of expansion, the white man developed a civilization which he considered superior to that of men of any other color. While the average white man welcomed people of color from other lands into his country, admitted them to his institutions of learning and even to his home, he resented any suggestion that they were his equals.

Moreover, up to the twentieth century the supremacy of the white man was unquestioned. Then began to develop a spirit

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of revolt against his supremacy and today it is accepted without question almost nowhere. The success of Japan in her war with Russia gave a tremendous impetus to the movement, the first instance in modern times of a nation of colored people defeating in war a nation of whites. But the greatest factor in the decline of the white man's prestige was the World War. There had been no war between any of the great white nations for a generation and while they might compete with one another economically in the lands of the colored peoples, they presented a united front against these peoples. As mentioned before, they considered themselves superior to the colored man and they expected that superiority to be admitted and, on the whole, it was admitted. The World War changed all that. The white nations were not only engaged in slaughtering one another; they called in the despised colored races, black, brown and yellow, to help them in the process. The moral supremacy of the white man received another blow when the hopes which had been based upon the much-heralded principle of self-determination were not fulfilled. Finally the poverty to which many white peoples were reduced by the Great War, putting them upon an economic plane with the mass of colored peoples, added to the rising disbelief in the assumed superiority of the white man. In China a beggar is an outcast. One may throw him a copper to get rid of his importunings, but he receives no consideration. Imagine, therefore, the blow to white prestige when Russian refugees by the hundreds were found in the streets of Chinese cities with outstretched hands begging of the yellow man for bare subsistence. Today the colored man in Asia, at least, considers himself the inferior of the white man in force alone, his equal in most other respects and his superior in some. The Renaissance of China can hardly fail to strengthen that belief, for that renascence was made in the face of a contemptuous disbelief on the part of the white man. Its effect promises to be felt in India, Java and the Philippines.

The attitude of the Western Powers toward China has changed materially during the past few years in the direction of greater respect. The unfortunate aspect of the situation is the belief on the part of the Chinese that the change was not

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a voluntary but a forced one. It must now be obvious to any intelligent student of the relations between China and the Western Powers that these relations must be based upon the principles of equality and reciprocity. China is the only remaining country of the Orient where foreigners still enjoy the privileges that inhere in the principle of extraterritoriality. It is also the only country where foreign settlements or concessions are removed from the jurisdiction of the national sovereignty. The practical and psychological evils that inhere in that situation are too well known to the student of international relations to require comment. It is a situation that cannot persist in the twentieth century. But the problems concerned, even the difficult one of Shanghai, can be solved as the result of reasonable compromise, granted good will. Unquestionably, if there was ever a time in history when fair-minded men should extend their sympathy and assistance to a great people struggling to make their way out of the chaos resulting from the disintegration of old standards in every aspect of life, it is today in the case of the Chinese people. And this will not be an easy matter, for the Chinese will make irritating mistakes which it will require patience and restraint to overlook. But in this difficult situation action cannot be determined by the exigencies of the moment. On the contrary, men must be guided by the lessons of history and by policies which may be brought to fruition only in the distant future.

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THE GERMAN LABOR COURTS[1]

THE vast social changes of the last one hundred and fifty years have been only imperfectly and tardily reflected in a change of the substantive law. The concept of wage-earner, and the great number of new problems arising out of the wage relationship, can be handled only with difficulty by the old framework of legal theory and practice. In the so-called Anglo-Saxon countries, it is hazily recognized that we have here to do with something new, something in which our courts are inexpert and not properly equipped to act. Consequently the courts have "passed the buck". They have not attempted to evolve a new set of concepts; they have left that job to industry. Similarly the legislators, at least in the United States, have made it a policy to pass as few laws as possible in the field of labor relations. The result has been that a formidable body of customs and rules has grown up quite outside the purview of the law and in many cases directly contrary to the trend of judicial decisions. These customs and rules are not uniform, but there is some tendency for them to become so.

On the continent of Europe, and especially in Germany, there has been a definite effort in recent years to incorporate labor law into the substantive law of the various countries, as a semi-independent autonomous unit. The modification of the legal structure which is resulting is comparable in its importance to the modification of the Anglo-Saxon law that was brought about by the growth of equity. By a series of vitally important laws, mostly passed since the so-called revolution of 1918, the German government has put wage labor on a new legal basis. The interpretation and enforcement of these laws is being allocated not to the old courts but to a new set of courts, differently constituted and with different procedure from the old. The new courts are known as labor courts. They are a

[1] The material on which this article is based was collected as part of a study on standards of living in the steel industry, undertaken on an Amherst Memorial Fellowship.

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continuation and extension of the German industrial courts, whose evolution over more than a century may be briefly traced.[1]

The first industrial courts in the present territory of Germany were established in the Rhine province by Napoleon, on the model of the *conseils de prud'hommes* which he was then introducing into other cities of France. The German labor courts have thus a common origin with the modern French *conseils de prud'hommes*, but differ from them in several important respects. Indeed, the labor courts as established in the law of 1926 are the product of a sufficiently long independent evolution so that they deserve to rank as a distinctively German institution. They are nation-wide and compulsory, whereas the French councils cover only a fraction of the territory of France; they are presided over by a (supposedly) impartial chairman, whereas the French courts call in an outsider only as a last resort; conciliation in the new German courts is public, in the French councils it is private; appeal from decisions of the new German courts is to a special system of appeal courts, not to the regular courts as in France; and lawyers are admitted in France but not in Germany to plead before the lowest court.

The first German industrial courts were established in the Rhineland. Aside from the special factory court of Berlin, established in 1815, and the guild courts, no successful industrial courts were established before 1869 except in the Rhine Province and the adjoining district of Westphalia. But the idea of industrial courts was widely favored, and the Industrial Code of 1869 provided for the setting up of joint paritary industrial courts to decide disputes arising from the labor contract. The Prussian minister of commerce made some effort to stimulate the formation of such courts; however, in twenty years only seventy-four were set up, with rules that differed from one locality to another.

The Social Democrats carried on an active agitation for in-

[1] A full and careful account of the pre-war industrial courts is given in the *Bulletin of the U. S. Bureau of Labor*, vol. XXIV (1912), pp. 273-464: "Industrial Courts in France, Germany and Switzerland", by Helen L. Sumner.

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dustrial courts during the eighties. In 1889 came the great Westphalian miners' strike, and in 1890 was passed the first comprehensive law setting up industrial courts. The guild courts were left undisturbed, but all other industrial courts were obliged to accept the essential provisions of the new law. These were, that half of the assessors should be elected by employers and half by workmen, by direct and secret ballot, and that lawyers should not be allowed to appear in proceedings. In 1901 the establishment of industrial courts was made compulsory in all cities having 20,000 or more inhabitants; and in 1904, separate courts known as mercantile courts (*Kaufmanns-gerichte*) were set up for the settlement of disputes between merchants and their employees.

The industrial courts have not been abolished; the labor courts are a modified and extended version of the industrial courts, designed to give their benefits to the whole working population. Up to the time the new German constitution was promulgated it would have been hard to disagree with Jastrow's dictum that there was no state institution to which the workmen clung with more love or with warmer admiration than that of the industrial courts. So widespread had the institution become at the end that the Labor Court Law of 1926 actually brought about a reduction in the number of courts (from 582 to 527).

The chief categories of workers who had been exempt from the operation of the old Industrial Court Law were railroad employees, miners, agricultural workers and domestic servants. A large proportion of the time of the new labor courts is being taken up with complaints from workers in these categories. The miners, it is true, had their own state courts from 1891 on, but these were notoriously unsuccessful.

A final point to be noted in connection with the industrial courts is that a large proportion of their time was taken up with serving the needs of small industry.[1] The same is likely to be true of the new labor courts. Personal factors are less prominent in a highly standardized machine shop (for example) than

[1] Sumner, *op. cit.*, pp. 291-92.

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in a mine or in a home-working industry. But the decisions affecting large-scale industry, though they may be few in number, are of the greatest importance because they affect so many workers. The labor courts are as popular in large-scale as in small-scale industry.

The Labor Court Law of December 23, 1926, provides for the setting up of labor courts in three stages: local labor courts, district (appeal) labor courts and a federal labor court. The labor courts have jurisdiction over all civil disputes arising out of collective labor agreements or the negotiations for such agreements, including questions of freedom of association; in general, over civil disputes arising out of the labor contract, including apprenticeship, except, in certain cases, suits over the right of an employee to a patent, and excepting also disputes in the shipping industry, which are specially handled; over disputes between employees arising out of their common work; and over dismissals from work. In the operation of the Works Council Law, the labor courts may in many cases be called on for an opinion. Further, they have jurisdiction over civil cases which, while not definitely included in any of the above categories, are still closely related economically or legally to some case already before a labor court or shortly to come before one. Finally, cases may be submitted to the labor courts by special agreement between the parties. However, cases arising out of the labor contract may be removed from the jurisdiction of the labor courts when the parties to a collective contract agree to submit such disputes to arbitration.

The chairman of the labor court is a judge familiar with labor law. The new law permits the appointment of laymen to the position of chairman, but under such circumscribed conditions that in practice about all the new chairmen come from the legal profession. Some of the most successful of the chairmen of the industrial courts were laymen, including a number of former municipal officials, and these have been continued as judges of the labor courts; but the present limitation is probably wise. Under the previous system judgments given in appeal cases were not binding on the lower courts, and the result was that these often handed down varying or even con-

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tradictory decisions. Also, some of the laymen who formerly presided over the industrial courts were really not capable of giving a good decision.

Administratively, the labor courts are a part of the judicial system of the country. Courts are set up by the district judicial administration (*Landesjustizverwaltung*) with the approval of the highest district administrative authority for social legislation (*Landesbehörde für die Sozialverwaltung*), and after consultation with the economic organizations of the employers and employees. The same authorities that set up the courts also appoint the chairmen, but without seeking the preliminary advice of the employers' organizations and the unions. The expenses of the courts of the first instance and of the district (appeal) courts are defrayed by the district (*Land*); those of the federal labor court, by the Reich. Thus at a stroke the institution is nationalized. The old industrial courts were municipal institutions, responsible only to the municipal authorities and enjoying a good deal of local independence.

The appointment of chairmen is for periods of from one to nine years, with possibility of reappointment. After a service of at least three years a full-time chairman of a labor court may be appointed for life. It is probable that the office will tend to be filled by life appointees.[1] The experience of the industrial courts indicated that once a labor judge always a labor judge. It was virtually unheard of for the chairman of an industrial court to be removed. They liked the job and the job liked them. Indeed, it would appear that the alleged lack of sympathy for wage-earners and their troubles which is so often charged up against the legal profession is largely a matter of unfamiliarity with wage-earners and their problems. The German labor judge develops a broad sympathy which makes him acceptable to wage-earners as a group. It is significant that after a generation of experience with industrial court judges, the organized workers, while interposing the same strenuous objection to the appearance of lawyers before the courts that had characterized the Social Democrats' successful

[1] For a contrary opinion see Landgerichtsrat W. Kulemann in *Soziale Praxis*, vol. XXXV (1926), no. 6, p. 126.

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fight in the debate on the law of 1890, still made no objection to the appointment of judges as chairmen.[1]

Another change from the old practice which amounts to an expression of confidence in the chairman is the reducing of expense by cutting down the number of bysitters or assessors (*Beisitzer*) from four to two, one employer and one representative of the unions. Since the decisions of the full labor court are always by majority vote, this reduction increases the responsibility of the chairman. The panel of assessors is chosen for three years by the higher administrative authority with the approval of the chairman of the district court. The assessors are not elected, as were the assessors on the industrial courts, but appointed from lists nominated by the employers' associations and unions in the territory covered by the court, proper care being taken to give representation to minorities. Assessors for the salaried workers are nominated separately from workers' assessors. All assessors must be German citizens at least twenty-five years old. They must have been active in the district of the court as employers or workers for at least a year before appointment. Officials and representatives of corporations and trade unions are eligible. Assessors receive no regular salary but get their expenses paid and are remunerated for time spent in court. Employers or officials who discriminate against workers on account of their having been appointed assessors of a labor court are liable to a fine.[2]

In order to put in perspective the above provisions, which recognize the unions as legal representatives of the working class, it is necessary to remind the reader that there are more trade unionists in Germany than there are in the United States (though this country has a little more than twice as many inhabitants), and that the "company union" (American style), though it still exists in Germany, cannot legally represent the workers. The unorganized workers and the unorganized employers have no voice in choosing the assessors. Whether this

[1] Albeit they insisted on judges with training in labor matters! See resolution of German General Federation of Trade Unions at Leipzig (*Gewerkschaftszeitung*, 1925, p. 556).

[2] *Cf. infra*, p. 417.

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constitutes a denial of rights was the question raised during the debates on the law by the company unions or "yellows," (representing the extreme right) and the Communists (representing the extreme left of working-class opinion). The experience of the French *conseils de prud'hommes* has been that the unions controlled the elections even though the vote was not restricted to union members.

The labor courts cover ordinarily the same territory as the regular courts. In the industrial districts, this division works out satisfactorily. In non-industrial districts, there are not enough cases in the territory of a regular court to keep a labor court busy full time. Two possibilities therefore arise: (1) to give the labor court the same territory as the regular court, with a part-time chairman; (2) so to increase the territory of the labor court as to make it worth while to have a full-time labor judge. The first method has the advantage that pleaders before the labor court do not have to travel such long distances to reach it; the chairman, however, is not specialized in one branch of the law: usually in such cases he is also judge of the regular court (*Amtsgericht*). The second method has the advantage that the judge is enabled to specialize (and the labor judges I have talked with incline to the view that specialization is necessary); and furthermore, the election of assessors and the satisfactory administration of the court almost demand that its territory should include a center where workers and employers are well organized—but in rural districts they often are not. The question of the territory to be covered by the labor court is also bound up with the question of how far the labor courts should be independent of the regular courts.

No uniform solution of this problem was adopted. Prussia, Saxony, Thuringia and some smaller states set up only as many courts as it was thought would fully occupy the chairmen's time, and in this group of states there are only one-third to one-eighth as many labor courts as there are regular courts (*Amtsgerichte*). In South Germany, on the other hand, the aim has been to get the number of labor courts as nearly as possible up to that of the regular courts. The same difference appears in the setting up of the appeal courts.

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The law contemplates the creation of special chambers in the labor courts for salaried employees and for artisans. However, these chambers need not cover the same territory as the labor courts and in practice they have been set up in considerably greater number in some parts of the country than in others; sometimes they have simply not been set up at all and their functions have been turned over to the labor courts—a procedure which the law also allows. Special courts for special trades are also permitted under the law, and a country-wide system of courts for railroad employees, wage and salaried alike, is in operation. But the group of states which has kept down the number of its labor courts (Prussia, Saxony, Thuringia, etc.) has also kept down the number of its specialized trade courts (*Fachkammer*) so that in these states such trade courts are scarcely found outside Berlin. The decision in this matter may have been affected by the notorious ill-success of the state mining courts, which functioned side by side with the old industrial courts but with a different organization; they were presided over by government inspectors. These mining courts have been abolished by common consent and their functions transferred to the labor courts.[1] The question of special trade courts is further discussed below.

If the procedure before the labor courts seems of exemplary simplicity and despatch, the foreign visitor must remind himself that the regular courts on the Continent are also simple, and not cluttered up with Anglo-Saxon rules of evidence. The various steps in a German labor court case are briefly as follows:

The plaintiff (as in other industrial courts this is usually the employee, complaining against the employer) presents his complaint orally or in writing to the office of the labor court, and the defendant is summoned to appear before the court. Or plaintiff and defendant may appear before the court at its regular session in order to get a dispute settled. The chairman, acting alone, must first attempt conciliation. The procedure is of the simplest; the parties are not sworn, and the directest sort of question and answer is employed. If a settle-

[1] Dr. Willy Franke, "Die Arbeitsgerichtsorganisation im Deutschen Reiche", in *Reichsarbeitsblatt* no. 21, 1927 (July 20), II, pp. 259-62.

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ment is arrived at, it is reduced to writing forthwith and that ends the case. If there is no settlement, the case goes before the full court, consisting of the chairman, an assessor representing the unions, and an assessor representing the employers. But the chairman may decide alone if both parties request it or if one party admits himself in error. If one party fails to appear, the chairman may pronounce a judgment against which objection may be interposed within three days.

Cases before the full court may be conducted by the parties themselves or by a representative. The trade unionist is usually represented by his union; where the local union is large it customarily designates one man who gives his whole time to appearing in the labor court. Where the union is small, its members may be represented by the Central Labor Union. The employer, similarly, often delegates an official to appear for him. The only case when a lawyer is permitted to appear before the court is when this lawyer is employed full-time in the service of a party to the case (such a lawyer is called a *syndicus*).

In the hearings before the full court, witnesses may be summoned and material evidence introduced; the law obligates the chairman so to conduct the hearings as to bring the case to a close in one session if possible. Whether this is done or not depends on the chairman's ability as a concilator. The experience of the two alternating chairmen in a large Ruhr industrial center illustrates what different results may be achieved by equally conscientious chairmen. One is a young man, very earnest, with a passion for getting in all the evidence and especially for understanding each point himself. This zeal has led him to go down into mines, visit factories, and familiarize himself as far as possible with the details of the trades in which he is called on to act as judge. But he will never understand more than a fraction of the fine points involved in certain cases. When witnesses appear before him he questions them at length, and very frequently continues the case to another session in order to collect more evidence. Everybody likes him, but everybody agrees that proceedings before his court are not especially swift. His colleague is older and easier-going, with a

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knowledge of human nature and a certain ability to tell when people are lying. He relies on the judgment of experts, does not insist on understanding every point himself, and when he has to make the final decision does so promptly and cheerfully. His method is generally preferred since it settles the case more quickly.

The full court retires to deliberate, and decides by majority vote. The decisions are then announced publicly. The popular mind of course pictures the proceedings behind the scenes as a contest between the employer assessor and the trade-union assessor for the favor of the chairman, who is popularly supposed always to cast the deciding vote. In practice this picture would represent the situation very imperfectly. Decisions are often unanimous. One appeal court (*Landesarbeitsgericht*) is known to have had no disagreement among the judges during the first several months of its existence, all decisions being arrived at by unanimous vote.

Appeal is permitted to the higher court (*Landesarbeitsgericht*) if the sum involved is determined by the labor court to be greater than 300 marks ($71.40), or if the labor court permits appeal on account of the fundamental significance of the case. Appeal on points of law is also permitted, but is not common. The *Landesarbeitsgericht* and the Supreme Labor Court or *Reichsarbeitsgericht* are innovations created for the first time by the law of 1926; appeal from the old industrial courts could be taken only to the regular courts.

The appeal court chairman is appointed by the district judicial administrative authorities with the approval of the social administrative authorities. The full court is composed of the chairman and two assessors, chosen in a manner similar to that used for labor courts of first-instance. However, in disputes involving collective agreements there must be two assessors from each side or four in all. The appeal court chairman is always a judge of the superior court (*Landgericht*) and he remains chairman of the labor appeal court as long as he is judge of the superior court (i. e., usually for life). The chairman must have "knowledge and experience of the field of labor and social legislation" as a prerequisite for his appointment.

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The assessors must be at least thirty years old and must have been assessors of a labor court at least three years (that is, when the system gets going).

The parties to the case are not allowed to plead in person before the appeal court, but must be represented. The representative is ordinarily a lawyer, but he may also be an official of an "economic association of employers or employees" (i. e. of a trade union or an employers' association). The procedure before the appeal court is in general the same as before the labor court of first instance, except that the attempt at conciliation is omitted. The parties may be required to appear in person; witnesses may be called, and the whole case reargued, though there are limits to the introduction of new evidence.

The *Reichsarbeitsgericht*—the highest court of appeal in labor court cases—is located in the Palace of Justice at Leipzig. It is presided over by a justice of the regular Supreme Court as chairman, and consists in addition of four assessors, two judicial and two lay. The judicial assessors are *Reichsgerichtsräte* or Federal Councilors. The lay assessors are chosen by the minister of labor from lists nominated by the national organizations of employers and workers. All the judicial members of the court must have special knowledge and experience of labor and social matters. The assessors must all be at least thirty-five years old. Appeal may be taken to the Supreme Labor Court when the sum in question equals or exceeds the minimum required for a civil case to reach the regular Supreme Court, or when the chairman of the labor appeal court permits appeal on account of the fundamental significance of the case. Only lawyers may appear before the Supreme Labor Court. The procedure is similar to that before the regular Supreme Court; the briefs of the opposing sides are read, but there is no further debate.

A labor lawyer who has carried a number of cases up to the highest court informs me that labor never gets anything from the Supreme Labor Court that it does not get from the labor appeal courts. When I visited the Supreme Labor Court itself I was well able to understand how this would be the case. The court is (as it were) fortified against contact with common

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wage-earners. Past guards and up long marble steps, down echoing corridors must one go, and red-robed justices swish by, whispering as if to say, "Nothing has changed here." No street demonstration of outraged proletarians could make noise enough to penetrate to the upper back room where the hearings of the court are held. In the folds of the velvet curtains which reach up to a vast ceiling one can almost see the Hohenzollern henchmen peeping out, as if to grumble, "Nothing has changed here." The contrast of the Supreme Labor Court with the labor appeal court is far greater than that of the labor appeal court with the court of first instance. I visited one of each of these latter. It is perhaps worth noting that neither was pretentiously housed; the parties and witnesses appeared quite at their ease, and the chairmen seemed servants of the people, helping them to work out their own conceptions of justice. The Supreme Labor Court is like an oracle, or rather the entrance to an oracle, the Holy of Holies being hidden from view. The lay assessors, whose very presence exercises in the two lower courts a profound if indefinable influence, seem here like neophytes, quite overshadowed by the prophets of the faith.

The labor courts are competent to decide disputes over the enforcement of collective agreements; but the drawing up of collective agreements is a sphere over which they have no control. The industrial courts had from 1901 to 1916 important functions to perform in this field; the chairmen could act as arbitrators in collective disputes, and frequently did so, though their powers to secure observance of decisions rested on the force of publicity. Industrial arbitration has not disappeared in the last twelve years; rather it has been enormously extended, so that a special state organism has been created to deal with that alone. In this respect, the sphere of the labor court is more restricted than was that of the industrial court. The labor court may, however, be called on to decide whether a decision of an arbitrator was legally arrived at, and in certain cases, as for example the lockout of the Ruhr steel-workers in the fall of 1928, the court decision on such a point may have an important bearing on the outcome of the conflict.

Disputes over the enforcement and interpretation of collec-

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tive agreements fall within the competence of the labor courts, but may be transferred by agreement of the contracting parties to the competence of special arbitration committees. These are semi-official bodies whose decisions are as binding on the parties as a decision of the labor court having the force of law. They are composed of equal numbers of employers and employees, with a non-partisan member if desired. They may be standing bodies, or they may be called into existence for a particular dispute. Agreements arrived at before the arbitration board as well as the decisions which it renders must be submitted in writing to the labor court. The chairman of the court may then declare the terms of the decision generally applicable to all workers, organized and unorganized, under his jurisdiction. The existence of an arbitration committee does not prevent a dispute from being brought before the labor court if one of the parties to the collective agreement is attempting to impede the work of the committee, e. g. by unduly delaying it.

If the parties to a collective agreement do not wish to create an arbitration committee, they may alternatively agree to submit disputes of interpretation to a conciliation tribunal selected by them. Agreements arrived at before this tribunal are submitted to the labor court, and the chairman may declare them generally binding as with decisions of an arbitration tribunal. Parties to a collective agreement may also set up an agency to arbitrate questions of fact. This agency corresponds in its composition and methods of procedure to an arbitration tribunal such as ordinarily enforces and interprets collective agreements. The decisions of such an agency on questions of fact must be accepted as valid by the labor court.

All students of poor men's courts agree that in order to succeed in their aim they must be both cheap and speedy. The industrial courts of pre-war days in Germany were both, and the labor courts have changed the previous procedure only to improve on it. Procedure is not wholly free; a court fee is levied which amounts to one mark for a case involving up to twenty marks, two marks when the amount involved is twenty to sixty marks, three marks when the case involves sixty to a hundred marks, and so on up with an additional three marks

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for every hundred marks involved. But where the case is ended by conciliation, either before or after it has come before the full court, no fee is levied; and if the case is ended through the failure of one party to appear or by acknowledgment of error or withdrawal of the complaint before there has been any pleading before the whole court, only half the usual amount is collected. Fees are paid only when the case is concluded. The law makes no special provision for defraying witness fees and other expenses, which presumably fall on the parties with the possibility of collecting from the opponent, as in proceedings before the regular courts.

The procedure is as rapid as can reasonably be expected, and there are few complaints on this ground. Of the cases which were decided in the lowest courts by final judgment during the first six months of the labor courts, only four per cent lasted more than three months from beginning to end. Appeal has been made even more expeditious than under the industrial courts. It must be taken within two weeks, and two weeks are allowed for the preparation of the case, after which a date is set for the hearing. Of the cases which reached the appeal courts during the first six months of the labor courts' existence, two-thirds had been disposed of by the end of the period. The period allowed for appeal to the Supreme Labor Court is the same as that for the appeal courts. Cases are showing a certain tendency to pile up before the Supreme Labor Court, but this difficulty is not believed to be serious; it may be remedied at any time by the simple expedient of making provision for more sessions.

The law of December 23, 1926, was adopted only after the most exhaustive discussion, extending over a period of six years and more. Every party except two presented a bill of its own on the subject at one time or another, and some presented several. The votes in the Reichstag did not follow party lines exactly; all parties except the Communist Party agreed that labor courts should be set up, and the differences of opinion were on points of organization and competence. By the time the law came up for its last revision, all sides had had their say; and the final debate was short.

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The chief point of contention was how far the labor courts should be independent and how far affiliated with other authorities. Four possibilities were open:

1. To continue the existing arrangement: i. e., to make the labor courts responsible to the communal authorities. This solution was advocated by Wölbling and a group of enthusiasts for the old industrial courts, which were organized on this basis. But it hardly seems consistent with the extension of the courts to agricultural districts.

2. Organic union of the labor courts with the regular courts, as a separate chamber. This project was worked out in a referendars' project of the national Labor Ministry in 1923. It had the backing of the great bulk of employerdom, for the employers were opposed to independent labor courts.

3. Complete independence of the labor courts. The government projects of 1923 and 1925 (which were not adopted) went farthest in this direction.

4. Affiliation of the labor courts with a semi-independent labor authority, in the administration of which both employers and employees would be represented, and which should include not only the labor courts but also all the labor and social authorities, such as those for social insurance, accident prevention, labor inspection, vocational guidance, employment exchanges, arbitration and conciliation. This proposal corresponds to the Social Democratic conception of the future state, and was given form in the Labor Law Committee's project in 1921, but not pushed; the Social Democrats recognized that the expense would be too heavy at that time.[1] As a step toward this goal the Social Democrats recommended making the labor courts independent for the time being.

The first of these four proposals—that which advocated making the labor courts responsible to the communities—found support chiefly in Berlin, whose communal court had been extremely successful. Against the extension of communal courts it was argued that (1) the courts would be at the mercy of accidental political changes in a community;

[1] See *Die Arbeit*, 1924, p. 73, and *Gewerkschaftszeitung*, 1925, p. 556.

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(2) communal courts would be incapable of an adequate decision on weighty matters like the interpretation of important collective agreements; and (3) in the matter of appeal, insuperable difficulties would be created which could be solved only by accepting the regular courts for this purpose. Appeals from the industrial courts had been to the regular courts, but a continuation of this arrangement was fought by the collectivist element, which also found inconsistent with its principles the relegation to communal authority of an important institution like the labor court.

The proposal to unite the labor courts organically with the regular courts (advocated by the employers as a body) received unexpected support for a time from Radbruch, former cabinet member and popular Social Democrat, whose opinion carried much weight. In February, 1925, he argued in a speech against the independence of the labor courts. Their separation from the regular courts, said he, "would mean a death sentence for regular justice, and thereby create for the first time a real class justice." The work of the regular courts would be confined to legal battles over differences between capitalists; the regular courts would become "heaps of ruins". After expressing himself thus vehemently, Radbruch seven months later came out for independent labor courts; but his "heaps of ruins" speech had meanwhile created a vast amount of comment, and there are many today who deplore that the compromise finally effected in the law does not give the regular machinery of justice any great contact with labor cases and their liberalizing influence. The argument is raised to a very high plane by Dr. Lothar Schücking, a lawyer of Dortmund, whose extremely interesting article (in *Die Justiz*, 1926) contains the following:

> The bourgeoisie is not morally in a position to create a new law. For that there is necessary a certain idealism which since the middle of the last century is only with the working class, in so far as it is present at all. If now a new proletarian law arises which stresses the social character of property, the duty of labor and the right to work, and which in its judgments brings to realization the protection of the workers, then such conceptions will

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gradually penetrate bourgeois law. This latter will gradually become more and more what Potthoff calls *Güterverkehrsrecht*—that is, law of the exchange of goods—and its insufficiency compared with that of the labor law will become more clearly evident.[1]

Closely bound up with the question of how far the labor courts should be independent of the regular courts is the question of how to keep the labor courts in close and intimate contact with economic life. The industrial courts were peculiarly successful in maintaining this contact; and indeed one critic thinks that the slight falling off in public sympathy for the industrial courts which took place between 1920 and 1926 was due to the fact that certain functions formerly performed by the industrial courts (in connection with labor exchanges, vocational guidance, social insurance, and especially arbitration) had been transferred to other agencies.[2] This separation has been continued in the new law; though it is to be noted that the chairmen of the labor courts not infrequently act as arbitrators in industrial disputes, as chairmen of arbitration committees. It was hoped to obtain additional contact by means of the committees of assessors, which are empowered to transmit the wishes of the assessors to the chairman of the labor court and to the government inspectorate. The committees have not lived up to the great things that were hoped from them. However, the labor courts are charged with the enforcement of collective agreements (where this is not done by the parties themselves); trade unions and employers' associations may appear before them as such. This is a sphere which the industrial courts did not claim for themselves. Before the war collective agreements when once made were considered to be free contracts, and their enforcement was left to the employers' association (if any) as far as the employers were concerned and to the trade union as far as the workers were concerned.[3]

In England and America, where there are no special labor

[1] *Justiz*, vol. II, no. 3 (1926), p. 276.

[2] Wölbling in *Zeitschrift für die gesamte Staatswissenschaft* (July, 1927), p. 90.

[3] Häusgen in *Neue Zeit*, 1908-09, Bd. 2, p. 87.

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courts (unless the workmen's compensation boards be considered such) and where the labor contract is still nominally free, the importance of standards developed within industry itself is coming to be more and more recognized. The success of the German labor courts will depend largely on their ability to incorporate into their decisions the spirit as well as the letter of such constantly developing standards. That this point is crucial is fully recognized in Germany. Professor Sinzheimer, for example, is strongly opposed to a codification at this time of labor law because it is developing much too rapidly. And W. Kulemann of Brunswick rightly remarks, "For those cases which affect the general population, the fact that a judgment corresponds to their sense of what is right is more important than its juristic rightness."[1] Foreign observers will scrutinize the decisions of the labor courts very closely to see whether they are dominated more by juristic or by economic and social considerations.

The provision of the new law excluding lawyers from the labor courts of first instance continues a similar provision in the law of 1890 which set up the industrial courts, a provision which was due to the vigorous insistence of the Social Democrats. The considerations which determined the commission in 1890 to exclude lawyers were speed, cheapness, equalization of forces of employer and employee, and the character of the cases (less juristic than issues of fact) which made it desirable that they be settled face to face by conciliation rather than through representatives. In the years following the enactment of the law of 1890 the trade-union representatives gradually acquired the right of appearing before the industrial courts, though this right was always questioned until expressly recognized by the law of 1922.[2]

The considerations which governed the commission in 1890 have little application today. Lawyers would have little opportunity to cause delay in the labor courts; the chairman has sufficient powers to prevent it. Nor does the argument that

[1] W. Kulemann in *Soziale Praxis*, vol. XXXV (1926), no. 6, p. 126.

[2] Dr. Georg Flatow (Berlin) in *Soziale Praxis*, vol. XXXV (1926), Apr. 15.

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the expense would be too great for the poor man carry much weight. If he is organized, he will be represented by his trade union. If he is unorganized, he will either prefer to appear himself (in which case a lawyer would be unnecessary) or he will need a lawyer. If he has no money, the government could appoint a lawyer to assist him. (This system of assigned counsel, it should be added, appears to have worked in the past in the German regular courts rather better than in the United States.) The argument that the judge should speak with the parties face to face is valid; but it proves nothing regarding the appearance or non-appearance of lawyers, since both under the law of 1890 and under the present law the chairman has been given the power to compel the parties to appear in person.

If lawyers were admitted the employer would not have any greater power over against the employee than he has at present. No lawyer that an employer could hire would be any more familiar with labor law than the best Social Democratic lawyers and trade-union representatives who are always at the disposal of the trade unions. The union representatives are quite able to take care of themselves; they are not afraid of the regular lawyers, and in the appeal court, where they appear on an equal footing with them, they quite commonly beat them. The large employers, furthermore, who have a full-time lawyer attached to the firm, are allowed to have this lawyer represent them in the labor courts.

Yet the admission of lawyers before the labor court was the point which, next to the question of the independence of the labor court, was most hotly debated in the period when the law was under discussion. The legal profession favored the free admission of lawyers (though there were a few who were opposed—e. g. the Berliner Anwaltverein). A few liberal lawyers favored admission because they were sincerely interested in aiding the development of the new code. A much larger number who had no interest themselves in taking labor cases with their small fees felt that the good name of the profession was being injured. The employers were generally in favor of the admission of lawyers, and the labor press equally

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solid against. The Federal Economic Council debated the question and finally recommended against.

A century's experience in France and nine years of experience in Austria (where the unions, at first opposed to the admission of lawyers, are now said to express themselves in favor) have shown that lawyers may perfectly well be admitted to plead before an industrial court without affecting the usefulness of the institution. The reason why the debate in Germany was so bitter may be guessed from the remark of a labor court chairman in Frankfurt-am-Main. "The workmen who appear themselves are so wordy", said this official, "they talk about everything and only sometimes about the point. I have occasionally advised them to join a trade union so as to get their case properly presented". That the exclusion of lawyers works to the benefit of the trade unions is attested by the employers,[1] and also by unionists themselves. "The whole spirit of the law is to favor the trade unions", said a representative of the trade unions whose whole time was taken up with appearing before the courts; "the unorganized worker can not even get advice from the trade unions, much less persuade them to represent him. If he has a job, he must appear before the court on his own time." Whether the trade unions have the right to appear for the unorganized is an unsettled question; the fact is that they do not wish to do so. Some cities maintain bureaus for free legal advice; but even these are not permitted to appear to plead in the labor court.

The attitude on this point of the trade unions, whose lead the Social Democratic Party follows in matters of social legislation, has led to hardship in a certain class of cases. For example, an unorganized worker — unorganized, perhaps, through no fault of his own—lives in town B and wishes to present a claim before the labor court in town A. He cannot afford the railroad fare, and he does not know anyone in town A who will act as his representative. In cases of this type the practice has been for the court to cut the Gordian knot and appoint a so-called *referendar* to handle the case. The *refer-*

[1] See von Karger in *Deutsche Arbeitgeberzeitung*, Nov. 6, 1927.

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endar is really assigned counsel, and is remunerated as such. There can be no question that his activity is forbidden by the law, which is faulty on this point.

It is no doubt true that the law favors the trade unions at most points. But in the drafting of the law the Social Democrats and the trade unions did not have things all their own way by any means. The unions demanded that the labor assessors be specially protected against losing their jobs, and this was included in the first reading and later taken out.[1] The Social Democrats fought hard for the suppression of the guild arbitration courts, but were only partly successful.[2] The exclusion of lawyers was carried against a strong opposition in the Reichstag in the first instance, the German Nationalist Party, the People's Party, the Democrats and other parties contributing to what eventually proved to be the minority and the Communists abstaining. The Communists, indeed, opposed the whole idea of the labor courts from first to last, putting them down as an example of "class justice".

The chairmen of the Berlin industrial courts deplored the new regulations governing conciliation. The effect of making public the conciliation proceedings and of speeding up this stage represented, in their opinion, a retrogression. "The new project pays too little attention to the possibility of letting a dispute rest", they said. "It attempts to get people into court. The only place where a speeding up of procedure is offered is in getting through with the conciliation. But people much prefer in practice a settlement out of court."[3] This advice was not heeded, and the provision making conciliation public (instead of private, as with the old industrial court) was incorporated in the new law. The experience of the first half-year with the new labor courts does not bear out the pessimistic predictions of the Berlin chairmen. Conciliation took place in quite as large a proportion of instances as formerly. The figures are as follows:

[1] But *cf. supra*, p. 402.

[2] S. Aufhäuser in *Metallarbeiterzeitung*, Jan. 1, 1927.

[3] *Gewerbe- und Kaufmannsgericht*, 1926, pp. 49-50.

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SETTLEMENT OF LABOR COURT CASES

Method of settlement	Before the industrial courts				Before the labor courts	
	1924		1925		1927 (2d half-year)	
	No. of cases	Per cent of cases	No. of cases	Per cent of cases	No. of cases	Per cent of cases
Agreement	37,729	30.4	49,184	33.6	55,801	33.9
Refusal	1,307	1.1	1,847	1.3	575	0.35
Acknowledgment of justice of claim	3,379	2.7	3,788	2.6	4,005	2.5
Withdrawal of complaint	24,305	19.6	27,500	18.8	29,262	17.7
Default	11,696	9.4	17,502	12.0	16,874	10.2
Final judgment	26,538	21.3	23,736	16.2	23,908	14.5
Other methods	13,975	11.2	15,398	10.5	5,839	3.55
Unsettled	5,313	4.3	7,350	5.0	28,354	17.2
Total	124,242	100.0	146,305	100.0	164,618	99.9

The above figures are not strictly comparable as between the industrial courts and the labor courts, because the former include the cases of salaried workers and handworkers, which are not separately analyzed in the earlier years (though their total number is given).

For the same reason, and also because the new labor courts have not yet been running long enough to enable statistics for a whole year to be compiled, the increase in the number of cases under the new law can only be guessed at. If there appears to have been a considerable increase in the "unsettled" cases, and a decrease in the cases settled by "some other method", this may possibly be due to a change in the method of classification; at any rate it is worth noting that 5,953 of the cases listed as "unsettled" (3.6 per cent of all cases) in the second half of 1927 were cases on which it had been officially decided that no action should be taken, and such cases may not have been classified as "unsettled" in earlier years. The similarities in the method of settling are more striking than this (doubtful) difference.

Criticism of the Labor Court Law did not end with its pas-

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sage; but the points of discussion now are rather different. Thus it is being pointed out that one man (usually a trade-union official) may be at the same time assessor in the court and advocate before it. Although no case has been mentioned in which the individual gravitated back and forth between the assessor's seat and the advocate's desk, it has happened that a trade-union secretary appealed a decision made by a court on which he was assessor.[1] It is a situation that would have afforded no end of amusement to Mr. W. S. Gilbert. I lived for a month in the home of a man who was holding both offices, and I did not discover symptoms of splitting personality; but he and most other trade-unionists acknowledge the anomaly, and there are some who refuse to serve in both capacities. Hardly less serious in its effect, and much more difficult to remedy, is the fact that the same *organization* may be at the same time in charge of the conduct of a case and sitting in judgment upon it.[2]

This point leads directly to a discussion of one of the knottiest questions now confronting the labor courts, namely, what to do about the problems of special trades. On the one side it is argued that each industry, on account of its complexities, needs if not a special court at least a special chamber of the labor court with its own assessors. The law makes such special trade courts permissive; but outside of the railroad workers' national sytem of courts and half a dozen trade courts in Berlin, almost the only trade courts that have been set up are the mercantile courts and the handworkers' courts. One principal reason is the expense involved. Under present arrangements a single pair of assessors may hear cases from a number of different industries in a single afternoon. If it were necessary to change assessors each time a new trade came into court, the remuneration to be paid the assessors for time lost would mount enormously. But it is frankly doubted by many whether trade courts are really necessary in any case. A com-

[1] See *Deutsche Arbeitgeberzeitung*, 1927, no. 51 (Dec. 18).

[2] For a statement of this and several other criticisms of the present organization of the labor courts, see *Deutsche Arbeitgeberzeitung* (German employers' organ), Nov. 6, 1927, article by von Karger.

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promise formulation of the law that was considered and rejected would have made it possible to depart from the usual order in the list of assessors for the purpose of getting assessors familiar with the trade in question.

Whatever the final settlement of this question may be, it is clear that the present arrangement gives an undue advantage to one side where the assessor on his side happens to be familiar with the trade. For example, a miner comes to court with a wage claim. The point involved is so technical that the judge may be presumed to be incapable of deciding on it without special consultation of experts. But one of the assessors is an official of the miner's own union, while the employer assessor is (say) a manufacturer of bedsprings. In the deliberations of the court the union official will be able to contribute his expert knowledge, and his conception of what is fair in the case. The manufacturer of bedsprings will not have a corresponding body of knowledge to bring to bear. The reverse may of course occur at any time. The difficulty is not in the admittedly one-sided background and attitude of the assessor; labor courts are possible at all only because the assessors succeed to a degree in assuming the judicial attitude. The difficulty is that in this class of cases the assessors' respective predispositions to bias are not equal and opposite. The best that can be said for the present system is that in the long run the cases on both sides will average up; and that the present arrangement is cheap and convenient.

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THE PROBLEM OF LAND TITLES

WITH parcel post by the federal government an every-day matter, there is now before the country for consideration a change in the mechanism of another commonplace process that involves as far-reaching effects as the struggle for parcel post; with the difference that this process is one that has been performed as a public function since the days of the Pilgrim Fathers.

The process referred to is that of the public record of land transfers. In the period 1636–1680 the Pilgrim colonists started the recording system which has been followed here ever since. By 1850 this process had become inconvenient and inadequate, and in every successive decade the problem of how to handle the increasing bulk of material in the registries of deeds has become more urgent. Instead of one recording office at Plymouth, there are now 3,065 such offices in the counties of the United States.[1] About one-tenth of these being in urban centers, where transfers are highly concentrated, there are 300 offices which will in the near future feel acutely the need for more room, when their shelves, which seemed so far-sightedly abundant on the last rebuilding or addition, will have become prematurely filled by the accelerating influx of instruments for record.

What the early clerks' offices meant to the nation in the strengthening of governmental solidarity and the storing of rich lodes for later genealogists and historians to exploit, may easily be imagined; but at the present time their official glamor as the focus of the property interests of the community has given way to the atmosphere of a crowded factory under pressure to handle its raw material.

[1] The number of organized counties, returned as having population, at each decennial census of the United States, was:

1870	1860	1850	1840	1830	1820	1810	1800	1790
2,164	1,950	1,590	1,216	933	725	524	408	271

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Three reasons may be noted for the urgency of this situation. The first is the change in land use. When the land was chiefly agricultural it was transferred but seldom as compared with present-day city land. Thirty years ago investigators were startled to note the rapidity with which transfers were accumulating. To quote from the proceedings of the Massachusetts Historical Society:

> The great increase in the bulk of the records in the Suffolk registry of deeds [Boston] can best be comprehended by bearing in mind that 19 books contained all the deeds and other instruments left for record from the first settlement of the country down to the year 1700. On January 1, 1800, the number had risen to 193; on January 1, 1850, there were 606 books on the shelves; on January 1, 1875, 1,250 of them; on January 1, 1900, they had increased to 2,656 in number. So that there have been added in the last twenty-five years more books than had been filled during the entire period that preceded it. These are huge folio manuscript volumes, containing, most of them, 640 pages each. The present register (1900) has attested as many volumes of the records as all his predecessors put together and half as many more besides.

Any populous county seat will parallel this instance.

The quiet daily tide of documents is increasing to impressive proportions. These are two records taken at random: The year's total in Kings County (one of the five counties of Greater New York) in 1924 was 303,463—an average of over a thousand for each working day in the year. In Suffolk (not the most active county of the Boston metropolitan area) the totals for the third week of the same month in three successive years to 1928 were 671, 682 and 728; and the present annual total is double that of ten years ago.[1]

In the second place, no backward limits have been recognized in the use of the system. The record of 150 years is still maintained as a vast whole, whereas for the purpose of

[1] The somewhat new but currently common use of mortgages (first, second, etc.) in commercial land-buying and in financing house-building of the wholesale type has a part in the increase of documents in the urban registry offices.

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evidencing present ownership, so far as legal principles go, the books of more than seventy years ago need rarely be used.

The third problem is financial. The budget for a large office in a city county must cover salaries of the head and assistants, counter clerks, copyists, comparers, index clerks, cashiers, bookbinders—perhaps several score in all—and the upkeep of typing, photographic and other machinery. With provision for the public offices largely limited by past custom, it is difficult to secure funds for expansion or innovation. Any change in the annual budget of a political office is the resultant of many forces, and the direct fees collected from those who have papers to record are fixed by law and are below the actual cost.

The pressure of increasing difficulty in handling the records has caused various efforts toward simplifying the process. Besides experiment with details, such as the change from all to part manuscript work, printing the unchanging formal parts of deeds and mortgages and copying the rest by pen or later by typewriter (or now in some instances photographing the whole), there has been one basic innovation in the recording process itself. This is the change introduced in Cook County, Illinois, and in Massachusetts in the late nineties, consisting of recording a certificate of ownership instead of copying each deed or other instrument of transfer. This commenced American *title*-registration, a system which, as will be shown later, has immense advantages over the old system.

In the following discussion of the old system of land records —which is based on years of experience in the registries—the reader should keep in mind the distinction between the process of making the public record and the method of using the record when made. The relation between the two is one of cause and result. Modern legislation to lessen the amount of copying, for example, by enacting that two words shall have the effect of twenty formerly used, with a higher fee for using the latter, affects only the process of making the record. The new system of title-registration has undeniable advantages over the old system of deeds-recording from the viewpoint of the official who makes the record; but from that of the lawyer or citizen who must use it the advantages are even more numerous.

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The actual use of the old mass of records to ascertain the title to any particular piece of land may be illustrated by supposing that a bank, needing to know the state of a particular deposit account, kept no ledgers but was accustomed to get the footing of the account by referring to the checks which it had paid; that these were not even kept at the bank but were handed over when called for to the depositor, after copying each in a book in a public office, to which office alone the bank could refer in getting the statement; and that in the same public office were copied the checks of all the accounts of this bank and all the other banks of the city, not each account by itself, but the whole mass of checks in succession according to the dates they were left for record. In this situation how would it be possible even to find the checks belonging to the single account which it is sought to examine?

A natural first step would be to index all the individual papers, say alphabetically by the name of the maker. This is commonly done in a recording office where are copied the deeds, mortgages and other papers affecting each piece of land within the territorial division. After the earliest days when the records were so few that it was a simple matter for a lawyer to select from the index list the instruments he needed to read, there was a stage when the work of listing the instruments affecting a particular land-parcel was done by individual "searchers" who were skilled in reading the multifarious indexes, enabling the lawyer to begin his work with a list of the necessary documents. At first it was the duty of the county recorder himself to have this list made, but the demands outgrew his time and the records became the foundation for private occupation by individual agents not lawyers. Today there are hundreds of young women engaged in such listing and copying of documents, either as free-lance workers or on salary from conveyancing law offices. The Massachusetts registries are thronged with them, in marked contrast to New York City, where "title insurance" companies do most of this work in their own buildings, housing abbreviated copies of all the public records.

An illustration may be noted here of what the work had become by the eighties, when the *New York Herald* printed this:

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Lately the Jumel property was cut up into 1,383 parcels of real estate and sold at partition sale. There appear to have been about three hundred purchasers at the sale, and no doubt each buyer, before he paid his money, carefully employed a good lawyer to examine the title to the lots he bought. So that 300 lawyers carefully examined and went through the same work of examining the old deeds and mortgages and records affecting the whole property. Each searched the same index of names, picked out from the 3,500 volumes of deeds and mortgages in the New York City recorder's office the same big, dusty volumes, lifted them down and looked them through—in all, 300 times, the very same labor. Evidently, 299 times that labor was thrown away—done over and over again uselessly. And the clients—the buyers—together paid 300 fees to those lawyers, who each earned his money, but 299 of those fees were for repetitions of the same work. By and by, twenty years from now, instead of 300 owners of these Jumel plats, the whole 1,383 lots will have been sold and built upon. And, time and again, when these 1,383 lots are sold 1,383 new purchasers will again pay 1,383 lawyers 1,383 fees for examining the same Jumel title; only the fees will be larger, for there will—by that time, at the present rate of growth—be fully 10,000 big folio volumes. Not only that, but in examining the title for a purchaser his lawyer carefully puts in official researches; he makes a requisition on the recorder for all deeds, conveyances, mortgages and instruments in writing on record in his office affecting the parcel whose title he is examining. And, of course, the recorder carefully enumerates all the old deeds, etc., affecting the whole property. He charges and gets by law, five cents for each name searched against for deeds, and five cents per year per name for mortgages. Altogether, say twenty dollars is paid by each purchaser to the recorder for these searches. And, as there were 300 purchasers who put in 300 searches, the recorder gets 300 times twenty dollars for the same work.

A later step was the formation of "abstract" companies, which would furnish not only the list of the successive transfers from the index, but a synopsis or abstract of each, in their proper order, so that copies of the entire search or "abstract of title" could be supplied for separate lots out of a large tract having the same title. These companies could guarantee the

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accuracy of their product. Thus developed broader lines of private enterprise working within the public office, and still aiming to facilitate the lawyer's opinion on a title.

Until title-registration, the principal improvement within the public office since colonial days was in the form of the index provided. For example, it has been found worth while for the older offices to make a compiled index, grouping all recorded instruments under the specific names of the makers in alphabetical order in one series, and of the grantees in another series. The Suffolk County (Boston) compiled index of grantors for the years 1800 to 1899 is in 290 volumes, which are recopied when worn out with use. Here again the current growth is reflected, as the similar index for the next eleven years takes 124 volumes, and that for 1911 to 1920, 139 volumes. There are also nine-volume sets of items compiled annually to three years ago, and lastly, twenty-one-volume sets for the last two years, and a current set in twenty-two volumes, of items segregated only by surnames. The very indexing is now a heavy part of the recorder's work, although originally no form of index was set up. Many offices have no fully compiled index of documents prior to 1850, and the first indexes rarely carried any note of the locality affected such as is always now a part of the index entry.

A change suggested about 1885 in New York City is noteworthy. In the course of successive terms of office and legislative appropriations, the extraordinary task was accomplished of making a block index which numbered all blocks of land in the city (parcels continuously surrounded by streets) and brought into successive pages all transfers relating to a block. This was continued so that reference to later transfers might be found under the block number instead of by alphabetical search. Had this been finished one generation earlier, the formation of the great private title and mortgage companies would have been indefinitely postponed.[1]

[1] A by-product of this task was a set of abstracts, made and owned by the county, showing the title then to every lot in every block. As this is not technically a part of the county records, the same work is said to have been repeated independently by the first three title companies to form their plants.

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An improved index is not the last step in the use of the records; but it is nearly the last. It permits listing the documents which must be read in order to review the successive transactions that are assumed to have resulted in the present ownership of the land. By such reading, a skilled person can form an opinion as to whether each link of transfer is sufficient.

The lawyer's opinion is the criterion of good title. But it is rendered to but one owner, actual or prospective, and the next must revive the whole operation at new outlay of time and money. This hindrance in the transfer of land is intrinsically unavoidable under the present form of the public record.

It is now apparent that public proof of the ownership of any piece of land could be more simply and permanently afforded by title-registration: that is, the recording of a certificate of ownership for every land parcel passing into private possession, instead of by recording the instrument of conveyance. This idea was first employed in the Torrens system designed about 1858 by Robert Richard Torrens for Australia, where the certificates are issued not by judicial but by administrative officials. The story of its spread throughout the British colonial possessions and its adoption into England is in the encyclopedias; but the introduction of this principle into the United States, where the original certification of the tract must, under our written constitution, depend upon a decree of court, is of such recent date that it is but now discerned in perspective.

The merits of title-registration as a relief from the deeds-recording system are that it requires no copying of documents, thus cutting down the volume of work in the recorder's office, and that it does away with the examination of long chains of past transactions by providing a form of title-proof that is immediately available for use. The action of the court in examining the previous recorded instruments before the original registration of a title, and then directing the certification as a public record of the resultant finding, removes the need of ever again going through the old records on that title. The certificate of title is a statement of the whole ownership, although it does not do away with the usual outside inquiry regarding taxes, current leases (not of record) and United States liens.

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Besides the certificate in the county office, a duplicate is furnished to the owner, which must be presented at the registry when a note is to be entered of any change in the title. When registered land is to be transferred on sale, filing the signed deed and surrendering the owner's duplicate certificate authorizes a new certificate to be made out to the purchaser, and the old owner's certificate is canceled, with a notation of the number of the transfer certificate. In practice all certificates are numbered consecutively and kept in bound volumes at the registry of their issue, those that have been stamped "Canceled" being left in place.

Neither mortgages nor other documents for registered land are copied, but they are left on file in the registry with a serial number for each instrument; this number is noted on the certificate with a short statement of the purport of the document. The notation of the discharge of a mortgage is put alongside that of the mortgage.

As the certificate of ownership precisely describes specific land there must be an engineer's survey to the satisfaction of the court before title can be registered. It is commonly required that permanent markers shall be in the ground, and that the plan shall show such data as will enable the lines to be reproduced on the ground at any future time. A copy of the plan is bound with the original certificate.[1]

About thirty years have elapsed since the first use of the American Torrens system, if that name be accepted for the plans initiated by statute in several of our states providing for original registration of titles by decree and subsequent transfers by the recording officers with directions from the court when needed. Since the insufficiency of the deeds-records becomes acute in the large city counties earlier than in the country districts, some of the statutes made the change optional with the counties; others required it throughout the state. Wherever the new system has been adopted, however, it has

[1] The uniform orderliness of these plans has been extended in Massachusetts to unregistered lands by the recent rule that any plan left at the registry must be of one of two sizes and on tracing cloth, for standard filing. This also enables the registries to furnish blue-prints.

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been as an alternative optional with the individual, existing side by side with the old system rather than superseding it.

From scattered figures of the use of title-registration to specified dates the following fragmentary table has been compiled:

	Cook Co., Illinois	Cuyahoga Co., Ohio	Hennepin Co., Minnesota	Ramsey Co., Minnesota	Pierce Co., Washington	State of Massachusetts
Date of report	April, 1927	April, 1927	April, 1927	April, 1927	Jan., 1929	Jan., 1929
First certificate.....	Mar., 1899	Sept., 1914	Dec., 1901	May, 1902	Sept., 1907	Dec., 1898
Original certificates..	191,199	208	3,147*	3,198	85	13,426*
Total certificates	339,915	17,853	38,849	55,978	3,838	67,268†
Certificates in 1926..	25,279	3,414	3,339	3,660	(1928) 259	.....
Applications in 1926	823	15	219	120	.....	(1928)676
Total applications ..	9,307‡	208	3,147	3,451	70	All 13,426

* Not reported, but possibly.

‡ 1917 to 1927 only.

† Four principal registries.

The line of figures, "totals certificates", is not indicative of how many pieces of land have been registered—for there is no telling how many of these certificates have been successively issued and canceled for the same land, or how many include grouped lots—but the table does indicate how often owners in these localities have saved outlay of time and money for repetitive examinations of these titles. It is reported from Cuyahoga County, Ohio, that practically all new registrations there cover large tracts for subdivision (for the evident saving of costs on the separate lots), and that there are estimated to be more than 25,000 separate parcels registered. Bank loans in this county in 1926 on registered land amounted to $8,456,133. In all of Ohio there had been registered on January 1, 1927, lands having a total assessment value of $22,421,000. In Cook County, Illinois, the loans in 1926 on registered land amounted to $76,178,975, and the lands included in initial registrations that year were valued at $6,500,000.

In Massachusetts there is wide resort to registration to secure the court test of titles which because of some deficiency of the deeds-records are no longer currently acceptable. If the court

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finds that there are no actual outstanding rights and decrees registration of the petitioning owner's title, the question is settled and the owner again has a marketable title.

That a few of our state or county governments are thus seen to be supplying proof of land-titles gives reason for supposing that all may eventually do so. Nevertheless, two considerations apparently threaten the likelihood of this consummation. There is a serious danger of lack of adequate administration for the new system as it gains headway. The purpose of the certificate of title will be partially defeated unless the office space, facilities and clerical force are sufficient to issue the certificates as rapidly as wanted. Instances have been seen of county offices so crowded that the writing of the certificates is delayed to the danger point: a difficulty that can be prevented only by wide appreciation of the purpose and benefits of the system so that public and political enlightenment will compel administrative conditions comparable to those prevailing in private enterprise.

More than half of the states which have adopted the permissive use of title-registration have failed to provide separate officials for the new system, and its administration, after the initial decree, is consigned to the existing recorders in addition to their previous duties. Even if the situation is met by the separate counties by installing special assistants, it would seem that a state with many counties, like Virginia or New York, ought at least to create a state superintendent to aid the counties and insure uniform administration. The desirability of issuing a state document on the public purpose and local mode of use of the new system seems patent, yet in New York State, with land registered in several counties, no official publication has been issued in the twenty years since the act was adopted.

The efficient development of private title companies in the United States is a second force militating against more rapid spread of title-registration, since these companies tend to reduce the conspicuous pressure that led to its original enactment. A powerful factor in the growth of the New York City companies was their early combining with the evidencing of titles the lending of money on mortgage; the two businesses so sup-

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plemented each other as to give dominating positions in both fields. In one sense the replacement of hundreds of individual lawyers by three "title guaranty" companies which took place in New York City in the eighties and nineties was advantageous, for it showed how simply a company with copies of all records could avoid repetition by sorting the past transactions into chains of title, and after one examination using these for the starting-point of future reports, adding later links as they might occur. This mechanical advantage in treating together the whole mass of a locality's records would be available to the individual lawyer only if he could concentrate widespread demand for title-opinions in his office. It is, however, only a halfway measure to handle old matter that should be abandoned.

Title companies in different localities have developed various forms of usage, due to the different stages in development of the forms of law prevailing in the different states at the time of their admission to the Union and adoption of constitutions, and also to the varying enterprise of the corporations in originating documentary forms and practices to appeal to their customers.

The facts of the chain of title are expressed by companies as (1) abstracts with guarantee of full agreement with the records; (2) certificates of how the record title is vested, which are forms of legal opinion for which a company has the same liability as a lawyer; and (3) title-insurance policies. These all are current usage in different localities, varying with the degree of land use, from open rural regions to the peaks of density in New York, Los Angeles, Chicago and Philadelphia. The first of these forms is by statute admissible as evidence in a lawsuit. The second is acceptable to an owner because like an attorney's opinion it is backed by financial responsibility. So is the third, which was originated in Philadelphia about 1877, was later carried to Chicago and New York, and now can be obtained anywhere through a metropolitan company.

In the use of the records the major process is gathering the elements of the record for the bit of land, like gathering and fitting the pieces of a picture puzzle; the companies do this and keep the result, so that at the next transfer the pieces are no longer scattered, as when different lawyers handled

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them. While a title-insurance policy interprets the facts of the recorded chain, it does not lighten the work. The issuance of the policy is merely an extra step following the title examination. The point here made with regard to the private companies is that by their methods of handling titles they supplement the public machinery only in the mode of use of the deeds-records, and in no way affect the task of making the mass of record itself.

Their contribution has been, by doing the examining work out of the public eye, and by sorting title chains, to relieve the pressure and to bridge the gap between the breakdown in usefulness of the public record office itself for deducing title from the records and the restoration of that usefulness through an adequate administration of title-registration.

It rests with the American people what the administration of their recorders' offices shall be. There is no compulsion to the exclusive use either of the deeds-recording system and supplementary private enterprise or of title-registration. The two systems are in operation side by side. One-third of the states have afforded permission to their citizens to register their titles. Of our hundred largest cities, registration is potentially available in forty-seven. In the places from which actual use was cited above, the owner of registered land feels no greater sense of novelty in his dealing with the land office than the neighbor who has not registered.

The actual prospect is possibly best suggested by one's own reaction to the questions: Can government service function as well as private service? Can private service on the basis of the old form of record indefinitely conceal the need for, and advantages possible to, adequate governmental operation of the new form? Is even remarkably convenient private service, based on reliability and financial responsibility, worth while when it is not the main object sought? (Of course such service must be well paid, in addition to dividends and the cost of the public work on which it rests.)

Possibly issue need not be drawn between the two. The actual pressure of recording (which in New York County when the block index plan was broached in the eighties required

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sixty feet of extra shelving yearly) is growing faster than ever. In 1928 four counties in four states outside of New York had over 200,000 transactions apiece, the largest number exceeding a half million, and of twenty-one counties having each a population of half a million people no county had less than 100,000 new documents filed and six had more than twice that number. The ever-increasing use and subdivision of land is likely to crowd all the agencies of title proof for years to come.

To get the most benefit the states should continue the attitude taken in initiating title-registration. Confronted by the earlier situation here sketched, the government appointed commissions to investigate the need and possibilities of relief, and so the first acts were drafted. An attitude of watchfulness toward the comparative use of the old and new systems might easily be maintained with periodic reports say by the office of the secretary of state showing the proportionate division of the annual transactions between the unregistered and the registered titles.

In such an attitude both lawyers and economists are especially interested. Were this not true of the lawyers it would be an anomaly in history. The public necessity for the high ethics of their profession is due to the wide extent to which they are interested in all the common affairs of the state. But there are two specific issues between the individual lawyer and the title companies.

The market for title-insurance, the latest invention in evidences of title, depends on recognition of the inherent possibilities for "error and omission" in the deeds-recording system and its mode of use. Title-insurance advertising therefore stresses the defects of that system, of which the company assumes the risk to protect its policy-holders. On the other hand, it has been the effort of the Bar through the two and a half centuries of that system to make it operate with justice and as well as possible, and all constructive effort should be in that direction instead of the opposite.

Not only is title-registration constructive in spirit, but also it opens to the Bar its opportunity of again directly serving in land transactions, with the single purpose of properly com-

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pleting the transaction in hand and with no obligations in regard to the preëxisting title.

What concerns the economist is the cost and the product. Title-registration gives what neither the deeds-recording system nor any of the private forms of evidence resting upon it can: a product repeatedly available after one principal fee. The fixed fee for a new certificate upon a sale of land is usually but slightly more than the present charge for recording a deed and is nominal compared with any other form of title proof. Even the cost of initial registration through the original action of the court, though more than a seller ordinarily would pay toward the proof of title on a single sale, is not considered large when it is sought to settle some question that prevents use of the title if it is left open; and it can be recovered on separate sales when a subdivision group of lots is included in one petition.

It is true there are developments still left for the future as to the discarding of the old records of early registrations, and classifying the indexes of current certificates (which so far are mere alphabetical lists reminiscent of the first lists of grantees). The idea of insurance by the state against errors by its employees in attending to transfers has become attached to the system in some jurisdictions, and special funds have been accumulated at interest to offset the system's cost.

Evaluation of the whole saving that may be effected to the public through the new system must be postponed until some state or county government, anticipating the need of more space for its records, and sufficiently enlightened to consider a complete reorganization in the interests of efficiency, shall undertake a systematic and comprehensive study of the vexatious problem of land titles.

DORR VIELE

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REVIEWS

Living in the Twentieth Century. By HARRY ELMER BARNES. Indianapolis, The Bobbs-Merrill Company, 1928.—ix, 392 pp. $3.50.

Essentials of Civilization. By THOMAS JESSE JONES. New York, Henry Holt and Company, 1929.—xxvii, 267 pp. $2.50.

These two studies of contemporary Western civilization employ very different methods. Professor Barnes gives a genetic interpretation of "how we got this way", in J. H. Robinson's phrase; Mr. Jones attempts what he calls a synthetic interpretation of the essential values of civilization. Hardly a topic or a name appears in both indexes. Professor Barnes writes as the self-confident social scientist, sure of his facts and achieved results; Mr. Jones, who is educational director of the Phelps-Stokes Fund, with a long record of service with educational foundations behind him, writes with the tolerant, liberal, philanthropic air of one who has had much practical experience and much disillusionment with theorists.

Mr. Jones asks, "What is Civilization?" He answers by listing four basic objectives common to all the organizations of society: health and sanitation; appreciation and use of environment, material and human; effective development of the home and the household, the chief factors for the transfer of the racial heritage; the processes of re-creation — physical, mental and spiritual. In successive chapters he undertakes to comment on what "the six types of organization through which civilization functions", governmental, industrial, educational, religious, philanthropic and artistic, can contribute to these four social objectives. He concludes, "Consciousness of community, consciousness of man, and consciousness of God will be expressed in the leavening of organizational activities by a determination to help realize the four community essentials." A civilization is to be judged by the extent to which its activities contribute to the aims of the social work of philanthropic foundations like the General Educational Board. What this means specifically may be gleaned from these comments on art:

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> Art's appreciation of health as a human factor is (so far) least of all for the production of health-posters and poems for health propaganda. . . . Is it not also orthodox art to surround the miraculous achievements of medicine with wonder and to infuse the reality of sanitary conquests with dramatic fancy?
>
> The world is grateful to artists for their enduring presentation of family life and the sacred ties of the home. . . . True consciousness of art ideals evidently involves a sound consciousness of community life and especially an awareness of the vital functions of the home and its responsibility for the transfer of human heritage from one generation to another.

Professor Barnes' book, on the other hand, is a serious and scholarly attempt "to set forth in clear and popular form those transformations in our knowledge and material culture which separate our day from the civilization of Bentham, Jackson, or Lincoln." It aims to be a chronicle of what has taken place, and claims originality, not in its materials, but in its synthesis and interpretation. It asks for criticism of the worthiness of its historical vision and the wisdom of its selective emphasis. It springs from the conviction that of the two chief tasks of history, to reconstruct the civilizations of the past, and to explain how contemporary society has come about, the latter is by far the more important. From any serious standpoint the former is vitally significant only as it promotes a better understanding of present civilization. Where we go from here will be determined by how effectively we recognize and understand where we are now.

As such an attempt at a genetic analysis of the more immediate origins of contemporary civilization, the book is extraordinarily successful. The name of the author is a sufficient guarantee of a comprehensive, informed and scholarly synthetic account. Professor Barnes has curbed his propensity to strew his pages with lists of names; the references are largely confined to well-selected and lengthy bibliographies. Even his vigorous opinions have been subordinated to descriptive analysis, and crop out only occasionally, in his polemics against Jahweh and against the democratic ideal. Every teacher of the social sciences, every man interested in the society of today, would learn much from this intelligent analysis. No better text exists from which to teach the background of present-day civilization as it appears in the light of recent social science. This statement of the book's value must be prefaced to any attempt to give it the kind of criticism Professor Barnes asks.

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The author points out that we are much more aware of material changes than of the accompanying transformations in intellectual outlook on the cosmos, God, the world, man and the objectives of human life. He believes that the greatest defect today is that responsible groups, with a mental life of the seventeenth century or earlier, are trying to control and direct a twentieth-century material civilization. It is therefore somewhat surprising that but one chapter is devoted to the intellectual implications of science, while nine are spent on an admirable account of the rise of industrialism. Even in the latter section, intellectual and institutional changes outside economics and politics are confined to a few short sections on the psychological results of industrialism and on the economic determinism of modern society. Evidently Professor Barnes has leaned over backward to avoid weighting his own interests.

For what it tries to do, however, this whole section (chapters iii to xi) is excellently organized. One misses the emphasis on the controlling influence of the development of machine-tools pointed out by Veblen and the engineers. One notes the contemporary and perhaps premature note of disillusionment with the democratic ideal, conceived in very narrow political terms. The social problem appears to the author to be the creation of an order in which a minority of the able will dominate. There is perhaps a little too much reliance upon H. L. Mencken and Will Durant as political philosophers; the intelligence tests are treated a little less critically than psychologists are now wont to treat them. But all in all there is probably no better account of the coming of the machine and its social implications.

The chapter on the implications of science leaves more doubt; it is a much more personal and selective interpretation. The very emphasis on the logical "implications" of science raises the question whether it might not have been better to subordinate what ought to be the changes in opinion produced by science to what they have actually been. Such changes are rarely governed by logic; and there is some discrepancy between what science implies for the author and the changes it has objectively caused. In this connection must be mentioned his obsession with astrophysics and the size of the universe of modern astronomy. As a matter of fact, astronomical theories have been accepted for centuries with no such revolution in religion and morals as they seem to necessitate for Professor Barnes; they awaken no criticism from the most ardent Fundamentalist. In spite of the author's scorn, Clarence Ayres is prob-

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ably right: astrophysics is irrelevant to everyday life, whether it ought to be logically or not (p. 37). Far more important in changing the intellectual status of religion have been the anthropological and psychological interpretations of its nature and function, which Professor Barnes here hardly mentions, although he has dealt with them fully elsewhere.

One misses most of all the note of tentativeness and provisional hypothetical truth so characteristic of the scientific temper of mind. The author is too ready to rest on the "results of science"; with the consequence that his unqualified acceptance of the undulatory theory of light, of the Bohr atom, and of the unmodifiability of the gene is already out of date.

In treating religion and morality, Professor Barnes has a tendency to make a sharp contrast between traditional views and contemporary attitudes, disregarding the infinite gradations historically developed and present today. He gives the impression that outside Aristotle no worthy human ideal had been propounded before the era of "social science." Aquinas knew nothing about human nature; there has been in Christianity no *real* rationale of human experience; from the formation of a reconstructed morality the theologian and religious leader must be excluded. The "right to be happy" is treated in a page and a half, and "How to be Good" is disposed of in two pages! That morality must be reconstructed in the light of natural and social science, no intelligent man would deny; but that the task is quite as easy as Professor Barnes seems to think, and that it can be carried out with so cavalier a disregard for the experience of the past, is a position to which no informed man would agree. In dealing with moral values and standards, Professor Barnes lays himself open to the charges of being crude, insensitive, unimaginative and ignorant. It is a pity, for no man is in practice more sensitive and human. It is well that he does not elaborate the theme. This is the one topic in the book where the author's well-nigh universal competence manifestly breaks down. Even his admirers will heartily wish that he had kept this section up to the high level of the rest of the volume, and had not verged so closely on the appearance of bumptious ignorance.

With this single exception, and in spite of these doubts about the chapter on science, the volume as a whole is to be heartily commended as the best brief survey of the genesis of contemporary industrial society.

JOHN HERMAN RANDALL, JR.

COLUMBIA UNIVERSITY

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Grain Growers' Cooperation in Western Canada. By HAROLD S. PATTON. Cambridge, Harvard University Press, 1928.—xix, 471 pp. $5.00.

In showing the competitive forces which led to the organization of the wheat growers of western Canada Mr. Patton has rendered an important contribution. In contrast to the rise and fall of the "ephemeral" farm organizations of the United States, those of Canada have had a permanent and continuous growth. In a country where farming has been mainly concentrated on the production of one commodity, the organization of the agricultural community has not been so difficult as in the United States. Moreover, the organization of the class interests of farmers was easier of achievement in the days before the means of communication, the press, the radio, the movies, had become highly centralized. Today the development of public opinion in the country, as well as in the city, is one of the chief by-products of centralized business. Besides, the increase in tenantry in the United States has resulted in further disintegration through the absentee farm owners' taking on the bias of the townspeople among whom they live. With the greater concentration of business in the United States, the country town is coming, increasingly, to represent the city point of view. But during the first decade of the twentieth century, before this intrenchment of city control, the Canadian farmers organized provincial, educational and protective associations and their own press, which became the direct means for crystallizing opinion for political action and for promoting large-scale marketing organizations to take over the distribution of grain and live stock. By direct action as well as through strong educational associations, composed entirely of growers, the farmers of western Canada have achieved a degree of economic and political solidarity rarely, if ever, realized in the United States.

> Through their provincial associations and the Council of Agriculture, western farmers have participated in the passage of important Federal as well as provincial legislation. Not only have Grain Growers' leaders been elevated to major ministerial portfolios in the national government, but in three provinces the farmers' associations have been called on to assume the responsibilities of actual administration, and in two of the three cases the farmers' governments have been returned to power on their records (p. 409).

But until the growers had experienced the limitations of political action and realized the capacity of their own marketing organizations

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for establishing more favorable conditions of competition, they were inclined to rely upon government measures. The government, on the other hand, was as inexperienced as the growers before the prevailing trend toward centralization, and had to learn by experiment the methods of establishing and maintaining a democratic agricultural government. The Dominion government had granted a monopoly of transportation to the Canadian Pacific Railroad in order to encourage its construction; the railroad, in turn, had granted monopoly power to the elevator companies as a measure of conserving its very limited supply of cars. Whoever should construct a standard elevator would have the exclusive right to cars. This agreement of the railroad with the elevator companies (p. 14) was as effective as a similar railroad regulation in the United States in preventing direct loading over railroad platforms by farmers and by street buyers, or scoop shovelers, as they were styled in the United States. This measure prevented the farmer from being his own shipper, eliminated the free-lance competition of street buyers, forced grain through the elevators which were largely in the hands of a few companies, and depressed the price of wheat to the growers, as reported by the Royal Grain Commission (p. 22). The Manitoba Grain Act, passed by the Dominion government in 1900, in accordance with the recommendations of the farmer members of the Royal Commission, required the railroads to furnish cars without discrimination for loading over platforms or through flat warehouses as well as through the new system of elevators. In addition to car discrimination, this act outlawed the over-dockage of grain received in storage and the mixing of grades; the elevators were required to furnish reports of the grain handled and the amount of each grade in storage. A warehouse commissioner was provided for with authority to investigate the complaints of farmers, to institute proceedings at government expense, and, in fact, "to function as an Attorney General for the grain growers" (p. 24). While the law proved of some benefit, the farmers soon found that if other interests were allowed to own and operate the elevators and at the same time to own and to make a profit on the grain of farmers which they stored and distributed, no law could be successful in doing away with practices so profitable to the trade. Realizing that mere negative pronouncements of law did not change the main trend toward concentration in marketing grain, the grain growers at length proceeded to organize their own elevator and marketing facilities, and, finally, induced the government to take measures to help

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finance the development of an elevator system which should be under their own control.

The government measures taken for the control of the grain trade at the time of instability, during the post-war period, 1919-1920, resulted in the establishment of a universal compulsory pool of the wheat of the Canadian growers. The Canadian Wheat Board was vested with a monopoly power to sell the entire crop for domestic and export consumption. The Winnipeg Grain Exchange ceased to function. The existing middleman agencies distributed grain at a fixed margin for the Board's account. The producers received an initial payment of $2.15 per bushel and a participation certificate which would enable them to benefit by a rise in the price of wheat (pp. 196-7). As the growers later received a payment of forty-eight cents per bushel on these certificates, or a total of $2.63 per bushel, and as they felt that they had experienced substantial benefit from a government monopoly of wheat distribution, eliminating speculation, fixing the spread between grades, and giving all growers an average pool price for each grade, they, in contrast to farmers in the United States, approved of government control, and sought to have it continued. But when this did not prove feasible the growers turned their attention to the formation of voluntary wheat pools.

After the post-war control of the grain trade had taught the growers a lesson in the advantage of a more complete coördination in the handling of grain, they realized the limited character of the coöperation possible under their stock commission companies, with no contractual relationship with the growers for handling the crop and with the individual growers continuing to dictate the time and method of sale of the product. The growers had come to see that their share companies, operating on a stock-profit basis, were being diverted from a policy of minimum costs to one of profit-making. But it should be noted that the growers' dividend stock companies were not stock companies in the ordinary sense. Profits were not made largely by stock venders and promoters of consolidations, reorganizations, subsidiary companies, or other instrumentalities of high finance. As pointed out by the writer, the shares were not controlled as a temporary speculative investment for profit on the stock turnover, but were entirely held by farmers, whose small, though permanent, investment in a grain trading company left their main interest in grain production, that is, in output, rather than in stock speculation. The successful experience of these growers' stock elevator and terminal marketing companies made it possible for the

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growers to adopt a pooling form of organization which involved an assumption of greater responsibility for united action in the distribution of grain. As the growers' marketing organizations had not been utilized for building up a powerful vested interest in the holding of stock, or in acting as feeders to private companies, the growers could easily turn to a more efficient form of organization. The California plan of organization, which was decided upon, involved the adoption of a long-term contract with the growers, the pooling of all the wheat under the contract, and operation upon a non-profit basis. As the California pooling organizations have resulted in a distribution of the risk over the whole product marketed, and as the growers, accordingly, have been paid the average price through ups and downs of the market, the Canadian wheat growers reasoned that by this plan their management would be left free to feed the market more advantageously in accordance with its power of absorption. Accordingly, they sought to establish voluntary wheat pools controlling at least fifty per cent of the acreage in the hope of thus accomplishing the same results as those achieved by the compulsory pools established by the government Wheat Board under the stress of the post-war reconstruction period.

While the Grain Growers' Grain Company handled on a commission basis 2,340,000 bushels of the 1905 crop of wheat during the first year of its operation, and the United Grain Growers' Company and the Saskatchewan Coöperative together handled 99,000,000 bushels, or 19.7 per cent of the inspected wheat of the 1923 crop, the Alberta wheat pool alone handled 34,219,999 bushels in the first year of its operations in 1923, and the three pools of the provinces of Saskatchewan, Alberta and Manitoba together, through their own central selling agency, The Canadian Coöperative Wheat Producers Ltd., marketed 187,248,000 bushels, or 53.1 per cent of the inspected wheat of the 1925 crop at an average pool price of $1.45 per bushel, No. 1, Northern basis. In the last-mentioned case, the central selling agency had a total turnover of $265,782,000, after deducting all selling and terminal costs (p. 414). During the same year the growers' stock dividend companies, the United Grain Growers and the Saskatchewan Coöperative Elevator Company, handled 95,600,000 bushels, about half of which was, however, pool wheat, and was accordingly marketed through the Canadian Coöperative Wheat Producers (p. 325). The centralized agency established for selling the grain of the three pools possessed the power to regulate the rate of sale and of movement to the final market, irrespective of the

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rate of harvest or the rate of movement from the 946 country elevators controlled by the pools. Through this regulation of the rate of movement by one centralized selling agency, the glutting of markets and the competition of growers are diminished and the competition of consuming markets for Canadian wheat is increased. The wheat pools control, through ownership or lease, nine terminal elevators with a capacity in 1927 of 22,325,000 bushels. Through these elevators it is possible to control the movement to strategic points in the United States and Europe (p. 257). Branch offices assist in widening the range of the possible market for grain in the leading markets of Canada and Europe. The progress toward direct selling was rapid: in the first year of operation of the Alberta pool in 1923 all wheat was sold on the grain exchange; in the first year of operation of the Central selling agency in 1924 about sixty per cent of its wheat was sold on this open market; and during 1925-26 and 1926-27 about seventy-five per cent of the wheat handled was sold direct to importers and millers (p. 272). The author characterizes this centralized marketing system in these words:

> The achievements of prairie farmers in building up two of the largest and most successful elevator companies in western Canada, followed by the organization and operation of an inter-provincial wheat pool, which has become the largest single grain marketing agency in the world, have not only made the participating grain growers conscious of being business men, but have also revealed to them that by co-operation they can engage in "big business" on an even larger scale than that realized by vested commercial interests (p. 409).

While those in sympathy with the economic advancement of the farmer will appreciate the importance of Dr. Patton's analysis, there is a question whether Canada will not in the long run follow the main trend of development by making agriculture subsidiary to the other business interests. No matter who controls the distributive organizations, whether organized by farmers or others, agricultural producers cannot maintain the balance of agriculture if other producing groups have more effective means of maintaining prices. Of this maladjustment, which constitutes the problem of agriculture in the United States, the author says nothing. The question is: have the wheat growers' organizations of Canada changed the main tendency of the cost prices of agriculture to move generally on a higher level than its selling prices?

WILLIAM R. CAMP

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International Economic Relations: A Treatise on World Economy and World Politics. By JOHN DONALDSON. New York, Longmans, Green and Company, 1928.—xxx, 674 pp. $3.20.

Books on this subject are scarce and anyone who undertakes to write a comprehensive text of this nature deserves credit for his enterprise and for the time spent on it. There are in this book sections which will be useful to any student or teacher of the subject. Dr. Donaldson has made a heroic effort to draw together the exceedingly scattered and in many instances fragmentary data on the distribution of resources and on the circumstances of their production, and has on the whole succeeded rather well; it would be difficult to name another volume which contains as much well-organized material on this topic. And the same is true of the sections on the position of foreign enterprise in special regions such as the Near and Far East.

The political and legal sections often seem more open to question, but this reviewer's criticism will be limited to a discussion of the general point of view from which the author discusses and interprets his data. It is difficult not to smile at his statement that "one might paraphrase Adam Smith's basic concept that in the natural interaction of private self-interest lies the best adjustment of the economic relations of individuals, and apply it to nations" (p. xii). No wonder Dr. Donaldson can say that "to the extent that solutions of problems are considered *no radical proposals* are made".

International economic relations are interesting as a field of study because they are so obviously a zone of conflict. The new, post-war tendency is to delimit fields of conflict and to turn them over for the development of methods, procedure, formulae, etc. to particular institutions, to specially organized machinery such as the International Labour Office, the Economic and Financial Committee of the League of Nations, the International Chamber of Commerce, the International Railway Union, etc. These organizations surely have not been set up because of a deep faith that "the best adjustment of the economic relations of nations lies in the natural interaction of private self-interest". *There* in fact lies the very root of conflict, of economic and military war and of the international economic anarchy of before the war.

And this brings us to a second principal criticism. Mr. Donaldson says his study is "an attempt at analysis of things *as they are*", and "deals with *actually* existing conditions and problems" (p.

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xiii). Now there is an obvious discrepancy between "things as they are" in international economic relations on the one side and official Washington's view of those "things" on the other. Among the outstanding facts of international economic life of the post-war period are such organizations as I enumerated above. Official Washington may not know of the existence of the International Labour Office, of the League, etc., but international economic life is at present to a very large degree being molded in these organizations. These institutions are the centers of activity, where acute problems are stated and discussed, and where the minds of the participating delegates are being conditioned to a new institutional manner of settling the difficulty. These organizations in Mr. Donaldson's view are apparently not "things as they are". There are chapters dealing with the "political factor", "world organization" and "world politics", but there is not a paragraph in the whole volume about the League or about the Labour Office! Here or there in the footnotes or in the appendix we find a reference to their documents; but the student reading through the text of the volume might easily believe that they did not exist. Precisely because our government is not willing to acknowledge the existence of these new facts in international intercourse, it would seem to be the function of a new university text to bring them to the foreground. A "treatise on world economy and world politics" is incomplete without them. The only official international organization which is recognized and discussed is the World Court, probably because it enjoys the favor of a certain number of the best minds in Washington. Its connection with international economic relations is, of course, infinitely less important than that of the League, the Labour Office or the International Institute of Agriculture.

Dr. Donaldson has given us a valuable reference book for data in his field which have thus far been difficult of access. His interpretation of these materials is of a more limited value, primarily because of his lack of appreciation of the new tendencies toward institutional treatment of the problems with which he has dealt.

RUTGERS UNIVERSITY HARRY D. GIDEONSE

Labor and Internationalism. By LEWIS L. LORWIN. New York, The Macmillan Company, 1929.—xviii, 682 pp. $3.00.

This volume is an account of those activities of organized labor which have international dimensions. Mr. Lorwin has delved with

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painstaking effort and questioning mind into matters left chiefly, hitherto, to the writers of headlines. The history he recounts and the problems into which he inquires have been, despite the solid book written by Laidlaw, only on the vague rim of knowledge of most American students.

The movement toward international coöperation of organized labor bodies (trade union or socialist) gradually took coherent form in the fourth decade of the nineteenth century. Out of the "teeming mass of ideas" of the time, which comprehended vague ideals of democracy, international solidarity, workingmen's emancipation, industrial coöperation, and out of the swift extension of the range of commerce and communication, the movement came. To one of the earliest of the small international groups which met to plan the triumph of their ideas, Karl Marx read the *Communist Manifesto*. The turbulence of the forties, the boom and activities of the fifties, interrupted the eager calculations of these early groups, and it was not till 1864 that any of the planned organizations achieved continued existence. In that year a group was formed by the union of the British and Continental labor bodies, which has since been known as the First International. In the successor organization, the Second International, the movement achieved greater strength and practical importance. In addition, the trade unions in many industries formed international federations. Despite repeated failure the striving for international union showed increasing vitality throughout the pre-war period. It continues at the present time, despite frequent change in membership and policy, constant impairment by internal differences, and the memory of complete impotence in 1914. In its programs remain many of the issues for which the struggle was begun almost a century ago. Since the war there has come into existence the Communist Third International, dominated by Russia. The other post-war body, the International Labour Organisation of the League of Nations, is unique among labor bodies in that governments, employers and labor leaders participate in its activities. From all of these groupings, since the war, the American labor movement has stood apart.

To give an account of these organizations, the causes of their failures and successes, and the part they have played in world affairs, Mr. Lorwin has surveyed an enormous collection of detail. He had, in order to explain events, to revert constantly to the course of industrial development and controversy in each of the chief coun-

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tries whose labor and socialist movements entered into these international bodies; he had also to enter into the study of the changing responses of each of the national labor movements to affairs inside and outside their countries. No less arduous was his task of inspecting and presenting the skeins of tangled doctrine to which each of the organizations, national and international, swore faith, of clarifying varieties of programs, and following the international movement through all the factional differences and coalitions which doctrinal disputes produced. All this has been done in orderly, adequate and far from dry summary. The story is completely and well written. The nature and history of each of the organizations and its units is studied by itself, and still kept in historical connection with others.

A reading of the book leaves behind a grist of general judgments. Throughout the record failure dominates success, dissension proves stronger than any unity of purpose. In those international movements which were composed primarily of socialist political bodies, the aims sought were generally vague, dispersive and illusory. In those internationals which were primarily combinations of trade unions by single industries, the will to coöperate has rarely been strong; the field of coöperation, save in a few dramatic times, has been narrow. Underlying the combinations of single unions there has been no coherent and thorough analysis of international economy in accordance with which effort could be concerted for mutual benefit. Thus one type of international organization has always suffered from an overdose of doctrine, another type from lack of one. The members of both have practically always in the final test of action shaped their decisions by adjustment to events in their separate countries, rather than as part of an international movement. Even the Third International, despite Russian dominance and insistence on orthodoxy, has not achieved any lasting measure of unity.

Mr. Lorwin finds that the main causes of the weakness and dispersion in the past, though different in form and dimensions, tend to go back to one root condition.

> To sum up, the international labor movement, as an attempt to build up institutions for international economic and political co-operation, has to develop within a world system based on rival national economies and competing national interests. It inherits nationalistic structures, national traditions, and national points of view. Its absolute promises are hedged in by conscious and unconscious reservations which cannot but make its performances dualistic in purpose and partial in their results.

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That is so. But in part, too, the failure was due to the vague and unrealizable character of the aims pursued and doctrines upheld, to the difficulties of converting the ardent social criticism which won adherence into any systematic and feasible program. The movements were all too often mainly emotional uprisings which were driven into the channels dug by the largest phrases.

Because of their power to mobilize emotions, to nourish a philosophy of brotherhood, these international movements remain a force working for the improvement of conditions of labor, for stimulating ideas and practices of democracy. Through the International Labour Organisation they (with the exception of the Communist International which fights that body) have a permanent instrument for the pursuit of their more immediate objects in the industrial realm. Above all they remain—the aim is less disputable than any other object and the obstacles clearer—a force for international peace. In some of the international organizations, or in some of their units—under the leadership of the Third International—there are purposes destructive of capitalist society. Mr. Lorwin is of the opinion that the aggression of Russian communism is almost certain to continue its slow change to one of compromise; but should war and upheaval on an international scale come, its purposes of destruction might conceivably come into action amid the greater destruction.

In the final chapter, the results of the scrutiny of the past are used to weigh the probabilities of the immediate future for the international labor organizations. In measured phrases, a modest destiny is outlined. As far as the probabilities can be balanced, they are well balanced here. If any sense of inadequacy remains as the final page is turned, it does not come from weakness in the treatment of the matters that are handled. It may come (it did to the reviewer) out of the thought of problems underlying the matters presented, and for the most part left aside by the author. These are the problems of doctrine, matters for a critical theorist. What beneficial objects can international labor organizations pursue in the world today? Does the progress of the organization of industry on an international scale supply a new justification for their existence? To what extent is the international regulation of labor conditions practicable and desirable? How can the organizations be fitted into other international organizations? What tasks can such a body as an international union of miners' trade unions beneficially undertake?

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Such is the order of questions which inevitably come into the mind when Mr. Lorwin's record is read. In addition to accurate reporting and interpretation of the past, critical appraisal is needed to supplement what Mr. Lorwin has done. Small wonder it is that these underlying questions were not directly examined. Before the economist who would enter into them lies the quagmire of complexities of the contemporary economic and political world. But without such a body of critical doctrine, judgment must stand on the sidelines of the clashes evoked by the international labor movements —a witness but not a guide.

HERBERT FEIS

GENEVA, SWITZERLAND

The Drafting of the Covenant. By DAVID HUNTER MILLER. New York and London, G. P. Putnam's Sons, 1928. 2 vols.—viii, 555 pp.; iv, 857 pp. $15.00.

Because of the scarcity of authoritative records, scholars have had difficulty in elaborating an accurate picture of the making of the League of Nations. Mr. Miller has done much to fill in the gap. He was a member of the committee appointed by Mr. Lansing to consider legal questions which might arise at the Peace Conference, then legal adviser to Colonel House's mission in Paris, and finally technical adviser to the American Commission to Negotiate Peace. Few could be in a better position to tell the inside story of the making of the Covenant; and Mr. Miller sagaciously and forethoughtfully kept a careful diary, as well as all important documents which reached him. His diary has been published in twenty-one volumes, but unfortunately in so limited an edition as not to be widely accessible.

The present work, however, is invaluable to the student of the League. It is in two volumes, of which the second and larger consists of documents only. It contains such materials as the various drafts of the Covenant, with their revisions, minutes of the Council of Ten, of the Commission on the League of Nations (both English and French record) and of the Plenary Conference, and the final texts of the Covenant. In all, there are forty documents, amounting to 833 pages—a treasure-trove for students in this field.

In the first volume, Mr. Miller gives a running story of the negotiations, connecting up the various documents, to which he makes constant reference. In his own words, he throws "such light upon

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these papers as my own notes and records afford". The style is usually dispassionate and detached, though at times the author expresses himself with extreme vigor—as in his discussion of Lansing's attempt to keep the Covenant out of the Treaty and, more particularly, of Baker's description of that episode; or in his final conclusions. The whole book bears evidence of the most meticulous workmanship, and of a desire to give to students—it is distinctly not a work for popular consumption—all possible sources of authority for his statements.

The Phillimore draft was the first official governmental text, followed by the report of the French Committee. President Wilson's first draft, based upon the work of House, which drew from the Phillimore plan, was ready late in the summer of 1918. Of this, the author remarks that in its provisions for a uniting of forces against the state that should go to war without arbitration, it resembles more the Geneva Protocol than the Covenant as it evolved finally. Mr. Miller would have preferred "Association" to "League"; and, while he desired trade equality, he scoffs at Lansing's argument for equality of states in the Council as "words having no meaning whatever in the actual world in which human beings live". He has even less patience with Lansing's argument that the constitution forbids a treaty providing for coercion—a hardy perennial—and devotes several pages to disposing of it.

Wilson's second draft reveals the profound influence of the Smuts plan. The ideas of the latter as to the Council, obligatory arbitration, mandates, etc., were taken over into this draft. The third draft was ready January 21. Now began conversations with Cecil, and then with Hurst, which led to the Hurst-Miller Draft. Here the idea of a Permanent Court was substituted for Wilson's arbitration plans, which Mr. Miller regards as impracticable at that time. This draft served as the basis of discussion in the Commission. A chapter is devoted to each of the fifteen meetings of the Commission. Mr. Miller agrees with Wilson that Article 10 provides no guarantee against invasion. Considering the interpretation now being given to Article 11, Mr. Miller's comment that it was passed without its significance being realized is of interest. A religious article was debated and dropped; and the Japanese put up a strong fight for racial equality. The question of sanctions is recurrent.

When Wilson returned to the United States he was forced to accept changes. Mr. Miller thinks that Wilson's first trip was wise

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(as well as legal), but not the second one. Wilson earnestly studied the suggestions made: ". . . the idea that he was wont arrogantly to reject suggestions of others is a myth of partisan hate". At the twelfth meeting, Wilson proposed three amendments—Monroe Doctrine, domestic questions, withdrawal—to meet these suggestions.

The above are samples of the innumerable matters discussed by Mr. Miller—the reviewer has merely "stuck in his thumb and pulled out a plum". There are many by-products, such as the conduct of conferences, the use of different languages, etc. Mr. Miller in general defends the Conference against the charge of intrigue, but not always against the charge of inefficiency. Among his conclusions may be noted: "The wisest of Wilson's many wise decisions was to put and keep the League in the Treaty of Peace"; that the Covenant remains about as it was written; that while the League cannot be what it was intended to be with the United States out, volunteer grave-diggers have been disappointed; that the campaign picture of the League drawn in 1920 was an "incredible farrago of balderdash"; and that "if the League goes on, we join".

CLYDE EAGLETON

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Statesmen of the War in Retrospect, 1918-1928. By WILLIAM MARTIN. New York, Minton, Balch and Company, 1928.—xiii, 329 pp. $5.00.

The *Journal de Genève* is one of the nine or ten newspapers in the world that really matter. Its foreign editor, William Martin, is one of the best informed of modern journalists. So in spite of the fact that many others have ably passed in biographical review the chief figures of the Great War—one thinks, for example, of Eugene Bagger's *Eminent Europeans*—such a book as this can never be reckoned one too many.

The twenty-five men chosen for examination are a fair selection, most of them well known to American readers. Perhaps Gustave Ador, the Swiss, would be the least familiar name in the list, because the activities of the Red Cross and the Prisoners of War Agency, however vital to human welfare, were less dramatic than the conduct of belligerent governments in time of war. Neutrality has its drawbacks, and one of them is that it seems to lack romance. Not so to our author. His point of view is the ethical idealism which exalts

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Pasteur above Napoleon and Ador above Clémenceau. To him Woodrow Wilson was the great figure of the whole era—"The war submerged all our European statesmen—one may say, without exception; alone the personality of President Wilson was made to look infinitely more impressive by this formidable ordeal" (p. 217). The two other Americans in the book, Herbert Hoover and Colonel House, also emerge with laurels. One infers that the expansiveness, candor and generosity of the better American type make it in the author's eyes the best type which the world has yet produced. By inference his opinion of the narrow American nationalists, the Lodges and Reeds and Big Bill Thompsons, would be as unfavorable as his views of their European prototypes.

If the author has any bias it is toward liberalism, surely the most generous of all possible prejudices. He tends to value each statesman in the degree to which he is moderate, generous, a good "citizen of the world". "Those who only made war, great men though they may be, will leave behind them but a transient fame. The memory of them will fade. Only those men will live on who knew how to make peace by getting inspiration in justice and in the needs of peoples" (p. viii). Briand is praised for extending the right hand of reconciliation to Germany; Venizelos of Greece, Masaryk and Benes of Czechoslovakia for subordinating immediate national ambitions to friendly relations with the liberal western powers, in contrast to the narrower attitude of Pachitch of Serbia, Bratiano of Rumania and Sonnino of Italy.

Yet this book is no cinematograph-land of heroes and villains. Charity is, if possible, stronger than liberal politics in William Martin's kindly spirit. He finds something to be said even for men whose political policies he detests. As a good republican, he likes least of all the crowned heads of the three autocratic empires—Wilhelm of Germany, Francis Joseph of Austria, Nicholas of Russia—and yet he depicts them with sorrow rather than anger, as men of good intentions but unfit for rulership. He can feel the agony of the pacific von Bethmann-Hollweg, pushed by the military party into a war which he did not desire but was constrained to defend, and of the liberal Count Czernin, desiring peace for Austria and obtaining instead—Brest-Litovsk! He is as ready to admit that Poincaré was the right man to disentangle French finances as to brand him the wrong man to handle French foreign policy. He feels as much sympathy for Clémenceau's pessimistic, atheistic but valiant soul, facing what he believed to be a worthless human race

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and a meaningless universe, as for Cardinal Mercier's lone valor in facing the German invader. He pays tribute to the manly honesty of Tisza even while deploring his tyranny over the Slavs of Hungary; admires the character of the old-fashioned English statesmen like Asquith and Lord Grey even while regretting their irresolute policies; delicately disengages the elements of progress from tendencies toward reaction or demagoguery in Pilsudski, Paderewski, Venizelos and Lloyd George. No one goes from his court of historical justice without a fair hearing before a patient and upright judge. If the verdict he pronounces is ever unfair it is because all human judgment is fallible.

A certain gift of happy phrase adds to the pleasure of the reader. "Nicholas II, paragon of all the bourgeois virtues . . . would have been the best of his own subjects" (p. 28). "It was not to avenge Francis Ferdinand that Austria made war; it was to kill for the second time his projects and his ideas" (p. 26). "Sir Edward Grey's great mistake was not to see that the freedom of action he valued so highly was deceptive, dangerous, and, what is more, nonexistent" (p. 100). Europe, a "mythical entity for many Americans" (p. 203). "In no country but England would Mr. Lloyd George have been any phenomenon at all. The extraordinary thing is that, with all his qualities and all his faults, he should have succeeded in winning over the very nation which was least calculated to appreciate either" (p. 297). Lloyd George "believes what he says, but he quickly forgets what he *has* said. . . . He is sincere by fits and starts" (p. 306).

PRESTON SLOSSON

UNIVERSITY OF MICHIGAN

War History of the American Railroads. By WALKER D. HINES. Published for the Carnegie Endowment for International Peace, Division of Economics and History, by the Yale University Press, New Haven, 1928.—xviii, 327 pp. $3.75.

This contribution to the American Series of the studies dealing with the Economic and Social History of the World War, which Professor Shotwell is editing under the auspices of the Carnegie Endowment for International Peace, is likely to be more effective in promoting international peace than in fostering domestic tranquillity. It will probably have a disquieting effect upon the editors and publishers of nearly all the newspapers and weekly periodicals

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of this country. Few of these recorders of current events and molders of public opinion have ceased since the war to dilate with faithful regularity upon the ghastly failure which the government made when it tried to operate the railroads. With such industry and zeal has the story been told that the inefficient and extravagant management of the railroads during the war cost the public uncounted billions of dollars, that the railroad service provided by the government was the poorest the country ever endured, that the Railroad Administration was dominated in turn by selfish politicians and greedy leaders of organized labor, that the railroads were wrecked financially and physically and returned to their owners in 1920 resembling little else than a huge pile of nondescript junk—so industriously has this story of ruin and devastation been circulated that all the aspiring defender of individual initiative need do to warn his followers of the dangers of government interference in private business is to speak in scornful tones of "what happened to the railroads when the government took them over".

Mr. Hines's account of government operation of the railroads creates a different impression. During the first year of government control the railroads handled a volume of freight and passenger business greater than that of any preceding year, and handled it with an efficiency which, measured by all recognized standards, was superior to any previously established record; the railroad service throughout the period of government operation was in all respects superior to the service afforded by private management in 1917; the railroads under government direction did as well as or better than those branches of industry which were privately managed during the war; at no time did political considerations affect the action of the Railroad Administration; labor policies were never dictated by labor union leaders; the purchases of materials, supplies and equipment were made with striking economy; the roads, instead of being grossly undermaintained, were returned to their owners in a good state of repair, the amount eventually paid for undermaintenance being but a small fraction of the fantastic claims presented; the finances were dexterously and skilfully managed despite depleted railroad treasuries, low rates, high costs, and the inopportune failure of Congress to pass appropriation bills; and finally, while there was an operating deficit of more than a billion dollars, this financial loss was remarkably small in view of the fact that while prices in all other fields were skyrocketing, freight rates were increased but twenty-five per cent and passenger fares still less, and even these

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increases did not become effective until the first year of government operation was half gone.

Since Mr. Hines was assistant director-general or director-general of railroads throughout the entire time of government operation, he is of course a somewhat prejudiced witness. But with respect to the record of physical and financial performance he marshals an array of comparative statistics which places his statements beyond challenge. The government unquestionably did a good job of railroading. Mr. Hines likewise disposes effectively of the charges of political favoritism and truckling to organized labor. Where prejudice reveals itself is in the discussion of the various policies adopted by the Railroad Administration with regard to labor, rates, fares and other less important matters which have been the subject of controversy. Seldom does he fail to find complete vindication for every act or decision. Expediency inevitably justified what sound principle and good practice did not sanction. *C'était la guerre*—the all-embracing excuse. The effort at vindication becomes at times a trifle strained; in particular do the excuses for the failure of the Railroad Administration to increase charges sufficiently to make the railroads pay their way seem weak and unconvincing.

Perhaps it is a faint suspicion that the plea of justification will not carry general conviction that is responsible for the most objectionable feature of the apologetic portions of Mr. Hines's discourse. He betrays a solicitude for his own record as director-general, when, in dealing with some of the alleged errors of the Railroad Administration, he takes pains to indicate that the fault, if by any chance fault could possibly be conceded, should be ascribed not to him but to his predecessor. In his discussion of the most bitterly criticized features of the Railroad Administration's labor policy he is particularly careful, whenever possible, to disavow responsibility. Though he defends the decisions about which so much question has been raised, he seems less concerned with the defense than with showing that the decisions were not of his making. It would seem that once he grants the soundness of certain measures, a discussion of the reasons for his view is a matter of greater importance to the public than establishing the time of the inception of those measures. To reverse this order of importance is hardly commendable.

T. W. Van Metre.

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British Routes to India. By HALFORD LANCASTER HOSKINS. New York, Longmans, Green and Company, 1928.—xvi, 494 pp. $7.50.

It is surprising that a theme so fraught with romance as well as with political significance should have waited so long for an historian. It is more surprising that, having found one, it has not inspired a more exhilarating book.

British Routes to India, indeed, wants little from the point of view of comprehensiveness. For the reader likely to be attracted by its title does not care to know more of the long route about the Cape, still used by ships of sail, and still a prominent factor in the naval strategy of the British Empire. He will be satisfied with the chapter (pp. 80-102) which Professor Hoskins devotes to its discussion. He will want to know of the more direct routes to the Indies and of British interest in them. These activities, from Warren Hastings' treaty of 1775 with Mohammed Abou Dahab, Egyptian Bey, to the establishment of the present system of control over Egypt and the Suez Canal, Professor Hoskins relates with scholarly patience.

There are solidity and substance to the chapters dealing with the rise of the early composite route by steam and caravan through Egypt, the rivalry of Egyptian railway and canal projects, the rise of the comprehensive system of subsidized steamship and mail services to the East, and the surveys and projects for transit via the Euphrates. Important sections revive the story of the fitful projects for the Euphrates Valley Railway, that crowded hard on each other from about 1854 to the late eighties. One is struck not by the zeal with which the British government promoted these endeavors, but by its great reluctance to see them crowned with success. Even in such an emergency as the Sepoy revolt, it was slow to make use of the Egyptian route for troops. Professor Hoskins has laid diplomatic historians under great obligations by assembling inaccessible data upon interests which have affected events far from the Near East, and about which a good deal of uninformed generalization is current.

It is not a serious reproach to the author that in covering so wide a field, in point of time, his contributions have not all been of equal intensity and value. Apart from some of the earlier chapters, his sources have been chiefly memoirs and periodical material, supplemented by occasional monographs, blue-books and parliamentary

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hearings. He has not made use of daily newspapers or financial journals, and has uncovered no archives. But it is perhaps in part a consequence of the material relied upon that there is a lack of sureness in the handling of diplomatic background and other matters upon which periodical articles are especially unprecise. Thus Hoskins can declare without evidence (p. 143), "That the British Government did seriously contemplate the occupation of Egypt at various times after 1830 cannot be doubted". Again (p. 337) the Foreign Office "permits", without proof, the Euphrates Company to understand that Parliament will approve a six per cent guarantee. Lynch Brothers (p. 424) assume "political responsibilities" and the British authorities give encouragement in the Middle East, both without documentary basis. These are not the only instances in which policies are ascribed to the British and other governments, without reservation, which are not matters of general knowledge, and not adequately supported by evidence. Another undocumented discovery of Professor Hoskins' is that Napoleon III in 1857 paid a visit to the *King* and Queen of England at Osborne (p. 341). It is not clear whether Lynch in 1831 (p. 424) or Hector in 1832 (p. 423) was the first British merchant at Bagdad.

The author's purposes, however, only incidentally entail diplomatic commentary. The real story is one of enterprise and endeavor; and *pace* Hoskins, it is a stirring theme. The highly accessible files of *The Times*, to go no farther, teem with material which would have added vividness, accuracy and significance to nearly every chapter. What was being communicated, what carried in transit, over the steadily improving routes? Who was interested in such problems, and why? What bearing did the Indian situation and Indian policy have upon the route questions? These are matters for which one must search diligently to glean much help from Hoskins. There is no hint of the influence of the overland mail route (pp. 408-11) upon railway building, or even upon diplomatic relations, in Europe from 1845 to 1861. The picturesqueness of Waghorn's exploits, the newspaper races for the earliest news from Bombay, these are matters whose inclusion would help what Professor Hoskins seems to be trying to do.

Somewhat arbitrarily, perhaps, the narrative begins to lose in fullness after 1860. The chapter involving the Suez canal share purchase is far from being an adequate summary of the readily accessible literature. And Professor Hoskins has written a chapter upon "Telegraphic Routes to the East" apparently without ever

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having heard of the memoirs of Werner von Siemens. The references to developments after 1875 are only perfunctory.

Professor Hoskins has, in a word, fallen short of producing the really notable book that would be possible without going a great deal farther in the use of primary materials. To do as much as he has done in this pioneer work has, however, entailed years of patient research; and it will prove an indispensable aid and encouragement to others who, it is hoped, will delve further into many of the related problems.

LELAND HAMILTON JENKS

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The Cambridge Ancient History, Volume VII. *The Hellenistic Monarchies and the Rise of Rome.* Edited by S. A. COOK, F. E. ADCOCK and M. P. CHARLESWORTH. New York, The Macmillan Company; Cambridge, The University Press, 1928. —xxxi, 987 pp. $10.50.

The seventh volume of the *Cambridge Ancient History* series covers the political, economic and cultural movements throughout the Mediterranean sphere in the third century B. C., with the necessary addition of nine chapters (ix-xviii) upon the early history of Rome and Latium, the expansion of the city-state of Rome, and its conquest of the peninsular portion of Italy. The vacancy created in the board of editors of the *Cambridge Ancient History* by the death of Professor John Bagnell Bury has been filled by the appointment of Mr. M. P. Charlesworth. Mr. Charlesworth's competent knowledge displayed in his recent book on *The Trade Routes of the Roman Empire* makes this choice a particularly satisfactory one as the series approaches the record of the Roman conquest of the Mediterranean lands. The extent of his knowledge of the economic penetration by Roman imperial trade deeply into the three "old" continents should insure a broad treatment of the fascinating historical problems which arise in connection with the expansion of Rome in the period from 200 B. C. to 117 A. D.

In chapter x of the volume now under discussion, Professor H. Stuart Jones has given an unusually well-organized analysis of the literary sources on the history of Rome to 300 B. C. and the information taken from them which appeared later in the works of antiquarians, encyclopedists and grammarians of the Christian era. The approach is rational and the result is to create in the reader

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complete skepticism as to the possibility of writing anything more than the probable course of events in Rome and Latium, sketched in the large. This sketch must be based upon the available archaeological evidence and the few datable events connected with the contemporary history of the Greek cities of the Italian peninsula which have come down to us.

Mr. Hugh Last and H. Stuart Jones have essayed the "hazardous" task, to quote Professor Jones' adjective, of tearing down the structure of older Roman history as Roman and Greek historians had put it together, and rebuilding it according to their view of what it must have looked like (chapters x-xvi). Professor Jones has done the political institutions. Mr. Last has had the more ungrateful and more difficult task of dealing with the military, political and economic narrative, more ungrateful because of the difference in the nature of the sources of investigation in the two related fields. One wonders why the legends and myths which surround the founding of Rome must continue to appear in historical works. "The evidence they [viz. the early legends] supply is less valuable for the beginnings of Roman history than for the entry of Rome into the intellectual heritage of Greece", according to Mr. Last (see p. 39). Quite true—except that the evidence they supply for the narrative of events in the early history of Rome is practically nil. Their actual historical value, as Last himself states, is for the second and first centuries B. C. In that setting they have a definite usefulness, as representing what a people which was becoming highly self-conscious desired their noble forebears to be. And so did they reconstruct them. It is to be regretted that Mr. Last has accepted (p. 342) the theory of a rainy age in Latium in the early days of Roman history, without presenting the "abundant indications" which indicate it. The fact would be of great importance if it could be proved; but indications are not proof. The large population which he predicates for early Latium is another theory, derived in part from the "wetter" theory. The theory of climatic change has long since been abandoned as a warranted working hypothesis in dealing with ancient Greece. For Tunisia and Algeria its refutation has been accepted by almost all of the competent investigators. See the study of Melvin M. Knight on "Water and Empire in North Africa" in the *Quarterly Journal of Economics*, vol. XLIII (1928), pp. 58-60, where the abundant literature upon the subject is cited. It has seemed to this reviewer that Mr. H. Stuart Jones' analysis of the evidence available for the early period of Roman history must

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inevitably have led to a more radical attitude toward rejection and reconstruction in dealing with the narrative of political and military events than that taken by Mr. Last, however much one may admire his learning and his conscientious effort to rehabilitate an historical period beset with difficult and highly controversial problems. The history of Rome's development to 300 B. C. is completed by chapter xvii, on the Gallic wars of Rome, by Professor L. Homo of the University of Lyons, and chapter xviii on the conquest of central Italy by Rome in its struggles with the Etruscans, Gauls, Latins and Samnites. This chapter is written by F. E. Adcock.

The progression of the *Cambridge Ancient History* into the Hellenistic period has called into the group of contributors a new list of specialized and competent scholars. Of the sixteen collaborators in this volume, twelve have not appeared in any of the previous volumes. The four remaining ones are W. S. Ferguson of Harvard, and the English scholars, W. W. Tarn, F. E. Adcock and M. Cary. Ferguson in chapter i has set the general cultural background for the entire volume in his discussion of the outstanding political tendencies and social ideas of the century. It is a vibrant and thoughtful summary of recent investigation upon the salient movements of the Hellenistic age, which can be read with pleasure and confidence by the non-specialist. The specialist will find additional pleasure and interest in occasional flashes of insight which derive from the writer himself. W. W. Tarn has written four of the twenty-six chapters which the volume includes. In chapter iii he covers the political narrative for all of the new Hellenistic kingdoms from 301 to 275 B. C.; in chapter vi the history of Macedon and Greece from that date to 245 B. C.; in chapter ix the tale of the wars between Syria and Egypt to the battle of Raphia in 217 B. C.; and in chapter xxiii the struggles between the Greek leagues and Macedon, 245-217 B. C. Tarn's uncommon biographic gifts are again displayed, as in his previous work for the *Cambridge Ancient History*, in his brief and sharply outlined characterizations, such as those of Demetrius City-Besieger; of Pyrrhus of Epirus "who held good cards, but could not play them"; of Antigonus Gonatas and Zeno the Stoic; of Aratus of Sicyon (p. 222)—

> a hero and afraid; . . . neither virtuous nor great, but secure in a devotion often denied to the great and virtuous; inspired by a high idea which possessed his whole being and gave him amazing success against heavy odds, and at the end a traitor to that idea and to his whole life's work: such was Aratus, largely drawn for us by himself.

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The chronology of the third century B. C. is notoriously difficult. Mr. Tarn has handled this basic subject with knowledge and good sense. In view of the information furnished by the newly published Oxyrhynchus papyrus 2082 and Ferguson's discussion of it in *Classical Philology*, vol. XXIV (1929), pp. 1-31, his dating for the tyranny of Lachares and the capture of Athens by Demetrius must now be moved backward by a year in each case, the first to 296 from 295 B. C., the second to 295 from 294 B. C. (p. 79).

The second chapter of this volume is a welcome summary of recent research into the early history of the Celts and their movements in Europe until their final settlement in Gaul, Spain and southern Britain. It is well presented by J. M. de Navarro. The administrative, economic and social side of the process of "hellenization" in Ptolemaic Egypt and the west-Asiatic kingdom of the Seleucids is admirably done by Professor Michael Rostovtzeff of Yale University (chapters iv-v). His special studies in the Zenon papyri and in the economic aspects of the Pergamene kingdom, and his intimate knowledge of the current excavations at Doura-Europus, a Macedonian foundation on the Euphrates river (pp. 186-87), give his work an unusual value. The remaining chapters on the lands of the eastern area which were penetrated by Greek culture are those of C. F. Angus on the literature of Athens and its philosophic schools; of Mr. E. A. Barber upon Alexandrian literature; and a survey of Hellenistic science by W. H. C. Jones and the very competent Sir Thomas L. Heath. The place and importance of Agathocles, tyrant of Syracuse, is presented in chapter xix by Mr. M. Cary. Professor Tenney Frank of Johns Hopkins University has written three chapters, those on Pyrrhus of Epirus, the first war between Rome and Carthage, and the political history of the west from 241 B. C. to the Second Punic War. Between Mr. Tarn's treatment of Epirus and the activities of Pyrrhus in Macedon and Greece, in chapter vi, and Mr. Frank's discussion of Pyrrhus in Italy and Sicily, the influence of the Balkan connections of Pyrrhus upon his decision to find a new field of accomplishment in the west has been omitted.

There are signs that the spirit of Locarno has penetrated even into historical circles. At least it is a pleasure to note among the contributors to this volume the name of a German scholar, Adolf Schulten of Erlangen University. He has written on the early history of Spain. There is probably no living scholar who could have done it so well. He presents the view, based upon the demon-

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stration of pottery finds, that the Iberians were not an early-stratum population in the highlands of Spain, but had expanded into that area in the fourth century B. C. from the south and east coasts (p. 782). It is refreshing to obtain a point of view upon the early Roman activities in Spain which attempts to rid itself of the sanctimonious coloration of Roman historiography. Schulten is confident that the Romans, in supporting Saguntum against Hannibal, broke faith with their Ebro treaty of 226 B. C. (p. 790). His understanding of the Ebro treaty differs markedly from that of Professor Frank (*cf.* p. 810). The concluding chapter of the volume is that of Maurice Holleaux upon Illyria and the early relations of Rome with that country. The selection of M. Holleaux for this work was particularly well-advised.

WILLIAM LINN WESTERMANN

Memoirs of Halidé Edib. New York, The Century Company, 1927.—472 pp. $4.00.

The Turkish Ordeal: Further Memoirs of Halidé Edib. New York, The Century Company, 1928.—407 pp. $4.00.

The Turkish Revolution of 1919-1922 is one of the most far-reaching events and interesting chapters of modern European history. Influenced manifestly by the French Revolution, the struggle for freedom in Turkey took a form in many ways parallel to that in France: e. g., the overthrow of a long-established dynasty of effete monarchs, the separation of church and state, the enfranchisement of the masses in their social rights and privileges, the concurrent waging of a war against foreign powers, the establishment of a "republic" on the ashes of a traditional monarchy, and the rise of a dictator of victorious military reputation as well as of reforming zeal in the realm of government and social institutions.

As in the French Revolution, many of those who were the leading actors in the earlier stages of the drama became outcasts in the final act. Halidé Edib, in Turkey, was one of these. Like Mirabeau, Robespierre or Danton, she had been one of the leaders of the Revolution; by her vigorous writing, her eloquent speaking, her enthusiastic sincerity and high motives, and her indomitable courage, she inspired the nation to an impetuous patriotism. Yet she was finally forced into exile under the very Kemalist government which she had helped to bring into being.

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Halidé Edib's two volumes of *Memoirs*, written directly in the most finished English, form a kind of double epic. There is the epic of a nation, brought through the fiery ordeal of battle, and the greater ordeal of responsibility, to a greater freedom. There is the epic of a personal life, still amazingly young and fresh, which has already made its mark in history.

In Halidé Edib's first volume she tells an intimate story of her life up to the end of the World War. She paints a beautiful picture of her home life and society in educated Turkish circles; she relates her struggles for a Western education, her innermost thoughts and reactions to her little conservative world; she describes her married life and difficulties, her opposition to polygamy. And then she tells the story of her distinguished social work, as novelist and poet, as journalist and writer on women's questions, as "Little Mother" to the widespread "Turk Ojak" movement of Turkish nationalism, as the first of women military nurses in Turkey, and as educational reformer and Inspector of Schools in Syria and other parts of the Ottoman dominion. She gives valuable glimpses of the political scene when the Young Turk movement was gathering force.

The second volume is an account of the Revolution itself, and is the most authentic and valuable record yet published on the history of that period. Halidé Edib, without undue emphasis, relates her rôle in fanning the flames of Turkish nationalism; in aiding the newly-formed "rebel" government of Mustapha Kemal in Angora, as one of its inner council; in fighting, as corporal and sergeant, in the battle-lines during the long campaign against the Greek armies in Anatolia; in the taking of Smyrna, with its tragic accompaniments; and finally as interpreter in the councils of the Powers when the war was brought to a close amid the intense suffering on both sides which she so vividly and poignantly portrays. The account gives an unusually critical appraisal of Mustapha Kemal Pasha, whom she supported in the early stages for his intense patriotism; later, she went over to the opposition and entered upon a reluctant exile in England because in his dictatorship he had adopted coercive measures which she could not condone. Throughout the account runs a steady feeling of sympathy and admiration for the simple Turkish peasants, the devoted men and women who paid the great price of suffering and sacrifice and to whom Halidé Edib ascribes the final victory of Turkey in its War of Independence.

The faults of these two volumes are negligible. Admiral "Galthorpe", in the second volume, should be "Calthorpe"; Gen-

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eral "Papulas" is more commonly spelled "Papoulas". A work of such historical importance as this should certainly be indexed. Otherwise these volumes, comprising nearly nine hundred pages of text laden with difficult personal and geographical names, show admirable and painstaking care on the part of author and publishers.

KENNETH P. KIRKWOOD

OTTAWA, ONTARIO

American Foreign Relations: Conduct and Policies. By JOHN MABRY MATHEWS. New York, The Century Company, 1928.—xiv, 700 pp. $4.00.

This work is to a certain extent a revised edition of Professor Mathews' earlier text entitled *The Conduct of American Foreign Relations*, which was published some seven years ago, but it is much more. For it contains a division devoted wholly to American Foreign Policies (Part I, pp. 3-214) which was not present at all in the earlier work. Here and there in the section devoted to the conduct of American diplomacy there also occur chapters and sections dealing with new topics such as Popular Control of Foreign Policy, The Diplomatic Service, and The Reorganized Foreign Service. There are also new appendices consisting of various documents illustrative of American foreign relations such as Washington's Neutrality Proclamation of 1793, Wilson's Fourteen Points, the Covenant of the League of Nations (*sic*), the Rogers Act, and two articles by the author on pertinent subjects, reprinted from technical periodicals.

The reviewer regards this as the best single volume on American diplomacy available. It is comprehensive, solid and penetrating. It avoids the error of retailing the history of our foreign relations without adequate attention to the organization and conduct of our diplomacy on one side or the policies which have informed that activity on the other. It avoids the abstract presentation of theoretical policy without adequate attention to mechanism and procedure and to historic episode and illustration. It remedies the error of a study of the organization and conduct of our diplomacy from a purely mechanical and legalistic viewpoint without adequate attention to policy and purpose by presenting in conjunction therewith a full treatment of the latter subject.

At the same time the reviewer would criticize the present volume adversely in a number of points. In the first place it is not our foreign "relations" which are "conducted" according to certain

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"policies", but our *diplomacy* with foreign powers; our foreign relations are objective facts and occurrences and need no conducting —or at least are not properly to be regarded from that point of view. Perhaps this will seem to be a merely verbal criticism but it is the reviewer's experience that much confusion arises in the minds of students because of this verbal inaccuracy. In the second place it seems to the reviewer that it would be preferable to reverse the order of treatment followed by Professor Mathews and present the organization and conduct of American diplomacy (State Department, Foreign Service, Treaty-Making, et cetera) before presenting American foreign policy; both our foreign relations and the governmental arrangements for conducting our diplomacy arose prior to and are less theoretical than the principles of our policy; the latter can be better understood after a study of the former. Third, the reviewer finds the text undesirably dull in literary style; avoidance of exaggeration and vivacity makes for precision and stability of judgment, it is true, but it also makes for an inaccurate picture of the vitality and importance of the subject matter; students gain an inadequate conception of the living quality and the pertinence of American diplomacy from these pages. Finally, the reviewer disagrees violently with the presentation in chapter ii. "Cardinal Principles of American Foreign Policy" the chapter is called. The only subhead employed reads: "The Policy of Isolation". Now in various places (p. 18, second paragraph, p. 23, bottom) Professor Mathews indicates that he realizes, of course, the inaccuracy of any such implication. But in other places ("It was not his [Washington's] intention to advise us that for an indefinite time in the future we should pursue a policy of isolation"—p. 23) he fails to escape from the wholly fallacious myth that Washington and other presidents have proclaimed such a policy; and nowhere does he refer to any sharp challenge to the traditional misinterpretation. As a result students who read Mathews repeat that "the United States has followed a policy of isolation"; it would be ludicrous if it were not tragic. Indeed the whole of Part I seems grossly inadequate.

In spite of these criticisms the reviewer believes that this is by all odds the most useful single volume on American diplomacy available at the present time.

PITMAN B. POTTER

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BOOK NOTES

With many writers a new textbook in history is mostly a problem in mechanics—proportioning parts, chapters and pages—together with the inclusion of novelties that will differentiate the work from other publications in the same field. The result in too many instances is the hop-skip-and-jump type of history in which deeds are stressed and ideas ignored, and both unity and continuity are lacking. In James Edward Gillespie's *A History of Europe 1500-1815* (New York, Alfred A. Knopf, Inc., 1928; 602 pp. $5.00) analytical interpretation—not merely the cataloguing of facts—has been the author's guiding purpose. Consequently one finds causes, motives and results instead of lifeless narrative. The result is a book that invites study and incites thought. The history of Europe for the three centuries following 1500 is so pregnant with the beginnings and developments of our modern world that the announcement of every new treatise covering that period awakens the hope that the model textbook has at last appeared. Professor Gillespie's work has been long in the making and those who have known of its preparation have looked forward to its publication with keen anticipation. The volume opens with about fifty pages on "The Foundations" in which the political, social and economic backgrounds are discussed as a point of departure. Then follow nearly a hundred pages on "The Expansion of European Life and Culture" including overseas relations, changes in industry and society, and the development of culture. Part III summarizes the results of the Reformation. The influences of "Absolutism and Imperialism" are set forth in the history of Spain and France. The rise of maritime powers with the resultant colonial rivalry and the growth of representative government are fully treated. Part VI is devoted to Central, Northern and Eastern Europe in two chapters which are altogether too brief. An effort is made to assess the "Progress of Civilization in the Eighteenth Century" in forty pages—one of the most valuable parts of the book. The volume closes with a thoughtful survey of "The French Revolution and Napoleon". In a straightforward, interesting style the author explains and illustrates the forces working both for and against the progress of civilization in Europe for three hundred and fifteen years. One

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finds new points of emphasis, fresh explanations, and influences ordinarily overlooked. The Spaniards and Dutch receive more consideration, and the peoples of Eastern Europe less, than is usually given them. No doubt students of the period will find ground for differences of opinion in the author's explanations and conclusions; but viewed as a whole this is an admirable text which deserves wide use. It is well-balanced, scholarly, up-to-date, and reveals the continuous process of change. Fourteen maps in colors add to its usefulness (though that of Europe in 1791 is listed as "Europe in 1789") and the references for further reading following each chapter are selected with discrimination.—A. C. FLICK, Albany, New York.

The aim of Henry Dwight Sedgwick's new book—*France, A Short History of Its Politics, Literature, and Art from Earliest Times to the Present* (Boston, Little, Brown and Company, 1927; viii, 396 pp. $3.50) is so revealing that it is worth quoting at length. It is, in the words of its author, "to give a slight but continuous sketch in outline of the political growth of France from the time when she first became a Latin country up to the end of the Great War—in short a brief biography of France. And, as a nation, at least for the readers whom I have in mind, consists not of the dumb many, who move uneasily under the spur of economic or other elementary social impulses and appetites, but of the few who have stepped forth out from among the multitude to give utterance, in one form or another, to the national soul, I have said little of economic or social movements, and have allotted what space I could to the men to whom we owe the most definite expression of what seem to me typical French traits and qualities in art, in literature, in the conduct and the appreciation of life." The book, he explains further, is intended for boys, young men or girls at school and college and for travelers. The question at once arises whether, granted that it were desirable, it is possible even to outline the "political growth" of any country without taking account of economic and social movements. What idea even superficially adequate can one get of the French Revolution if the peasant is relegated to the background, or of Napoleon without the Continental System? As far as things political are concerned the impression left upon the reader is that of "how it was" not "how it became". Further, in the attempt to embrace in a single outline the development of art and literature as well as politics, there is danger of crowding and confusion—a danger which Mr. Sedgwick has not altogether avoided. Kings and prelates, artists and authors jostle

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each other upon the stage in such throngs that in some instances they can scarcely be individualized. If the author had called his book by a less comprehensive title, as for instance *Some Impressions of French History, Literature and Art*, one would have given a more cordial welcome to the pleasant pictures, charming quotations and lively anecdotes which make up so large a part of the volume. —ELOISE ELLERY, Vassar College.

Ever since Mr. H. G. Wells started the fashion most of us have been writing outlines of something, literature, science, art, philosophy and, very frequently, history. Like most publishers the Vanguard Press has its own series, including "The A B C of Evolution", "The A B C of Philosophy", "The A B C" of the various natural sciences, and among the crowd "The A B C of History", a trilogy consisting of *The Foundations of Modern Civilization* (New York, Vanguard Press, 1927; v, 257 pp. 50 cents), *Our Own Times* (New York, Vanguard Press, 1928; vii, 322 pp. 50 cents) and an intermediate volume on *Civilization in Transition*, all three by Harrison C. Thomas and William A. Hamm. Many historians of the severer sort disapprove on principle of all such attempts. What individual today is competent to be a universal historian when specialists who have spent their lives on one period of one nation's life—the American Revolution, for example, or the Papacy of the thirteenth century, or Roman Gaul—can but offer a handful of facts, a few tentative theories, and numerous new doubts? Moreover there are obvious dangers in the compression necessary to a textbook or manual covering the whole human past. Too much that is marginally significant must be left out, all that delicate penumbra of exceptions and qualifications and diverse tendencies which modify the crude black and white "main facts" of history. In particular, small and quiet nations get altogether lost in the shuffle. Our authors, for instance, found it necessary to bracket all the recent history of the minor states of western Europe into one paragraph, giving the misleading and surely unintended impression that life in contemporary Spain or Portugal is much like that in contemporary Denmark and Sweden (*Our Own Times*, p. 186). Nevertheless Mr. Thomas and Mr. Hamm were abundantly justified in their bold attempt. They were avowedly writing for a public untrained in history and in particular for the radical wing of that public: the intelligent trade unionist and the rank-and-file Socialist seem indicated. These readers do not want monographs but they do want a general picture of the past. If

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they are not offered it in standard manuals they will draw their impressions from journalistic gossip, Marxian dogma, and the highly individual, not to say crotchety, "outlines" by literary folk who venture as amateurs into the historical field. Rather than permit the intelligent young rebel to fill his belly with the east wind, the authors determined to provide honest bread and meat. *The Foundations of Modern Civilization* and *Our Own Times* are genuine history. The sympathies of the authors may be radical but their handling of facts is in the best sense conservative. Practically nothing is presented as a fact which would meet serious challenge anywhere, and the general fairness is as noteworthy as the general accuracy. Personal hobbies and prejudices are conspicuous by their welcome absence. A few detailed objections might be raised. Should there not be at least a few references for further reading? Does not the absence of any index sometimes prove a bother even to the general reader as well as to the student? Is it true (*The Building of Civilization*, pp. 21-22) that no European nation is "even largely Nordic" and that the "great civilizations of Greece and Rome were one hundred per cent non-Nordic"? This seems as rash as Madison Grant or Lothrop Stoddard on the opposite side of the fence. The reader is surprised at the authors' surprise that "Wilson changed his mind between December, 1916, when he urged a peace without victory, and April, 1917, when he led the United States into the war" (*Our Own Times*, p. 181). Might not the resumption of unrestricted submarine warfare in the interim explain the whole matter? Can it be said that contemporary France is "infinitely" stronger (p. 320) than Germany? No Frenchman seems to think so, and few other Europeans would be greatly surprised to see Germany ten years from now a more powerful weight in the scales of diplomacy than France. It should be said, however, that the general discussions of the origins of the war, the controversies that marked its course and those that grew out of its settlement, are carefully balanced and give no impression of bias.—PRESTON SLOSSON, University of Michigan.

The present reviewer believes that no better book than Ernest Gruening's *Mexico and Its Heritage* (New York and London, The Century Company, 1928; xix, 728 pp. $6.00) has ever been written on Mexico. If American students had such a work on every country of Latin America it would be possible for some of them, at least, to proceed with a clearer understanding. Only a small portion of the work may be called history in the narrow sense of the word,

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for less attention is given to the matter of "heritage" than to a careful analysis of the contemporary political, social, cultural and economic conditions of Mexico. Yet almost everything which Mr. Gruening writes is illuminated by what appears to be a sound historical approach. Here one has something of the "New History" from the pen of a man who is not a trained historian in the strict interpretation of that phrase. The volume is pretty thoroughly documented and fully illustrated. The style is excellent, yet one has a feeling that the truth is not often sacrificed or even subordinated to the manner of expression. The author is judicious in the handling of his evidence and is perhaps as free from prejudice as an advanced liberal can be. The work begins with a historical survey of Mexico from the conquest to the end of the Diaz régime. In sixty-eight pages the author gives an excellent sketch of the main outlines of this period. He then deals with the "Indian Heritage", "The Revolution" (1911 and after), "The Church", "The Army", "Labor", "Politics", "Justice", "Education", "Health", "Foreign Relations", "Women", "Cultural Products of the Revolution". A brief "Conclusion" and a bibliography of twenty-five pages reveal the author in the rôle of a prophet, but with his prophecies grounded upon a thorough grasp of the nation's past. It would be too much to expect that a work of such scope would appear without minor defects. The section on foreign relations, for instance, is confined almost exclusively to Mexico's relations with the United States; and little is said about national politics in the chapter dealing with that interesting topic. Perhaps Mr. Gruening has no idea of turning his attention to some of the other nations of Latin America. If he should, he could probably render an invaluable service both to the scholars who are working in that field and to statesmen who will be called upon to deal with Latin-American problems.—J. FRED RIPPY, Duke University.

The Albert Shaw Lectures on Diplomatic History which began in 1899 with Professor Latané's study on the *Diplomatic Relations of the United States and Latin America* have furnished us with some fourteen monographs in the field of diplomatic history. Of these, five have been devoted to some phase of Latin-American relations, and the last — *Rivalry of the United States and Great Britain over Latin America—1808-1830* (Baltimore, The Johns Hopkins Press, 1929; viii, 322 pp. $2.75) by J. Fred Rippy— maintains the high standard of scholarship set by the previous volumes. As indicated by the title, the subject matter which Pro-

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fessor Rippy chose for his investigation is so limited that although he cites an article by Frank Simmonds in his preface to predicate the timeliness of the study, a book of this type is prepared primarily for specialists and for reference, and even Professor Rippy's somewhat sprightly style will hardly alter the situation. Indeed, only the fact that the work is monographic in character excuses the many and sometimes lengthy quotations—in some instances four to five pages —with which the study is fortified. But in the present case they add to rather than detract from the value of the work in that they are apt, and often from sources not available to the general student. One sentence (p. 312) gives a false impression by stating that the United States refused to accept the rules of the Declaration of Paris "because of the stipulation abolishing privateering" when as a matter of fact President Pierce would have gladly accepted it if amended to exempt all private property on the high seas except contraband. A similar statement in the preface (p. viii) is partially explained by a footnote although again the emphasis seems to be placed upon privateering. The author is to be congratulated upon his clear, unbiased and accurate survey of the period treated. —GRAHAM H. STUART, Stanford University.

In *The Nationalist Crusade in Syria* (New York, The Foreign Policy Association, 1928; xiii, 299 pp. $2.50) Miss Elizabeth C. MacCallum, the Foreign Policy Association's research expert for Near Eastern Affairs, has made a study at once of the recent growth of Syrian nationalism and of the practicability of the mandate system. In the first chapter she has described the mandate scheme; in the last she has discussed its success as regards Syria; and in the nine intermediary chapters she has examined the political turmoil in Syria since 1918. The task has been well done—and with almost impeccable impartiality. The theme of the work is briefly as follows: Syria became a mandate with the understanding that this was only a temporary status and that France would allow her to try her wings after a brief period of training. France, for her part, pursued a policy which indicated that she did not regard Syria merely as an independent nation temporarily under her tutelage. To this difference of viewpoint was added irritation caused by French administrative blunders, the decline of trade and agriculture, and the growth of national sentiment. These difficulties brought on the Druze uprising, a war which aggravated the difference and greatly increased Syrian nationalism. After months of fighting France agreed to allow the convocation of a constitutional convention which

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thus far has not been able to frame a document suitable to the mandatory power. During all this fracas, what action did the Permanent Mandates Commission take to settle matters? On the whole Miss MacCallum's criticisms of this body are favorable, for she realizes the difficult situation it is in. After presenting all the "pros" and "cons", she concludes, "French prestige now depends in part, as it never used to, upon the ability of French administrations to satisfy their examiners at Geneva. France's realization of the importance of this new element in the situation has undoubtedly placed Syria in a more advantageous position than it would have enjoyed had the mandate system not been devised." And further on, ". . . Many representative nationalists . . . have been known to denounce the Permanent Mandates Commission for what they term a complete ineffectiveness in dealing with the Syrian rebellion. Yet it is a significant thing that none of these representative Nationalists have been known . . . to advocate publicly the substitution of a direct colonial régime for the existing French mandate." The book is a vital one for students of the Near East and for those who follow the functioning of League machinery. — SHEPARD B. CLOUGH, Columbia University.

Among recent publications dealing with contemporary political developments in the Near East a significant contribution has appeared in the volume entitled *The Mandate for Palestine* (New York, Longmans, Green and Company, 1928; xv, 399 pp. $8.50) by J. Stoyanovsky, who has already gained recognition as an authoritative writer on the mandate system of the League by reason of a former work, *La Théorie Générale des Mandats Internationaux*, published in 1925. The author in the present work again confines himself chiefly to legal aspects of the subject he has chosen. In an introductory section, however, enough is said about diplomatic and political considerations to acquaint the layman with the salient features of recent Palestinian history and to give him an understanding of how the mandate came into being. Much of this section is therefore familiar ground to the student of Near Eastern affairs. It is in the remainder of the book that Dr. Stoyanovsky's distinctive contribution is to be found—in the section on the Jewish National Home and in the one following it which deals with "the mandate proper". The latter presents a detailed analysis of the obligations arising from the terms of the mandate—obligations of the mandatory toward the League of Nations as well as its obligations toward the inhabitants of the mandated territory. An inter-

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esting detail in this section is the author's criticism (p. 193) of the clause in the mandate which provides for reimposition of the unpopular capitulations in Palestine upon termination of the mandate. This he characterizes as inconsistent with the very purpose for which the mandate was ostensibly established—viz., the preparation of Palestine for political and administrative self-sufficiency. In the preceding section on the Jewish National Home one finds as clear an exposition as one could wish of the legal implications of the "national home" policy. In this part of the book, and still more perhaps in the introductory section, it is made apparent that the author's sympathies are on the side of Zionism and a little removed from Arab policies. Otherwise he would hardly have committed himself to a statement (p. 41) which means in effect that for certain purposes the Jewish people the world over may be considered as forming virtually part of the population of Palestine and that, by implication, there can be no question of granting the country unqualified autonomy so long as the dispersed population is absent from it. A few passages expressing similar opinions will not command the assent of all, but even the most confirmed advocate of immediate autonomy for Palestine will probably acknowledge that Dr. Stoyanovsky's book is the most dispassionate and thorough piece of analysis which has yet appeared in book form on the subject of the Palestine mandate.—ELIZABETH P. MACCALLUM, Foreign Policy Association, New York City.

A very useful addition to the Borzoi Historical Series is *A History of Canada*, by Professor Carl Wittke of Ohio State University (New York, Alfred A. Knopf, Inc., 1928; xv, 397 pp. $5.00). For the time being at least, it fills the long-standing need of a one-volume student's history in this field. Professor H. E. Barnes has written a noteworthy editorial introduction, drawing attention to several points regarding the value of Canadian history for American students. There are useful maps, the texts of the British North America Act and amendments are given in an appendix, and there is a good index. The newer tendencies and perspective are observable first in the allocation of somewhat less than half the space to the period prior to Confederation and only forty pages to that of exploration and French rule; secondly, in the increased attention to Canadian-American relations; but especially in the inclusion of sections or chapters dealing with economic and social development at the various periods, and some pages on Canadian literature and art. As a textbook it does not pretend to original scholarship or to much emphasis

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on interpretation. That the influence of the "new history" which this series aims to exemplify is not more evident in this volume should doubtless be attributed to the largely "political" character of the history-writing upon which it is perforce based, rather than to the author himself. Nevertheless more attention might without marked subjectivity have been devoted to the tracing of broad movements and factors in development. Indeed the volume inclines to the recording of events with incidental comment, and to sketchy treatment, thus leaving much to the teacher and to supplementary reading. Several specific points in the text perhaps warrant comment. For instance, the "repeal" of the Quebec Act (caption, ch. vi) is certainly too sweeping a term; save for the governmental machinery it decreed its salient features still remain. Exigencies of space have frequently hindered adequate elucidation; in the twelve lines dealing with the expulsion of the Acadians the explanation of it, "many French priests, subject to the authorities at Quebec, continued to live and work among them", is somewhat cryptic (p. 37). The fact that Roman Catholics would not have been excluded from a representative assembly if set up should have been made clear in connection with the Quebec Act (p. 47). The protectionist affiliations of the "Canada First" group might have been noted (p. 227). The technical term for the constitutional reunion of the Empire is imperial "federation" not "confederation", and to include the reference to Goldwin Smith in the paragraph dealing with this movement is certainly misleading (*ibid.*). In discussing the Americanization of Canada the author appears to have leaned on Moffet, a broken reed (p. 292). The issues and stages in the attainment of "equal status" might be more clearly stated (ch. xxx). Perhaps also, the importance of French Canada in the evolution of Canadian national life and problems might have been more stressed. These are minor defects; throughout the record the author has been called upon to deal with highly controversial issues, and appears to have succeeded in doing so with remarkable fairness.—A. GORDON DEWEY, Amherst College.

Following the Imperial Conference of 1926, which marked the coming of age of the British Dominions and the formal recognition of their equality in status with Great Britain, Mr. L. S. Amery, secretary of state for Dominion affairs in the Baldwin ministry, set out on a tour of the British Commonwealth that occupied seven months and carried him around the world. During the course of it he visited South Africa, Australia, New Zealand and Canada

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and delivered some 300 speeches, a selection from which has been published under the title *The Empire in the New Era* (London, Edward Arnold and Company, 1928; 306 pp.). Mr. Amery shows himself to be what Lord Balfour, in a foreword to the volume, calls him, "a passionate advocate of imperial cooperation". He believes that the true interests of each part of the Commonwealth harmonize with those of the whole, and that by intelligent and loyal coöperation it can be made into something far greater, both in material prosperity and as a force for world civilization, than has ever been known. In imperial outlook he is a disciple of Joseph Chamberlain and is convinced that effective fiscal preference is essential to the successful development of the Commonwealth. His tone throughout is enthusiastically optimistic.—R. L. SCHUYLER.

Described in the subtitle as "an account of the passing of the English Reform Bill, the causes which led up to it, and its far-reaching consequences in the life and manners of all grades of society", *The Transition from Aristocracy, 1832-1867*, by O. F. Christie (New York and London, G. P. Putnam's Sons, 1928; xii, 348 pp. $3.50) is a graceful and vivid picture of the varied life of the period by one whose youth—as the reader may gather from incidental allusions—reaches back to Mid-Victorian days. It is based upon a "manageable quantity of histories, biographies, memoirs, essays, speeches and novels", and, while not over-profound, is informing as well as entertaining. The "old system" previous to the first Reform Bill, the aristocracy, the rise and characteristics of the middle classes, various traits and policies of the queen and the prince consort, the position of the established church, the old coaching times, the advent of the railroads, together with some of the less heavy aspects of politics, are among the subjects dealt with. One of the points which Mr. Christie properly emphasizes is the essential aristocracy of the old Whig leaders, their hostility not only to a strong monarchy but also to radicalism, and the opposition of not a few, as large landowners, to the repeal of the corn laws. He dwells also on the almost miraculous many-sidedness of Prince Albert. In writing about famous estates it would have been helpful to many to mention also the families to whom they belonged. Instead of saying that ten bishoprics of the Irish Church were suppressed in 1833 (p. 54) it would have been more exact to say two archbishoprics and eight bishoprics. We are told (p. 228) that Prince Albert "could enjoy a joke against himself" and (p. 232) that he had "no sense of humour." While technically North was

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a "commoner" (113) it should have been pointed out that he was heir to a peerage. Without indicating that she may have been exercising the privilege of the great and the feminine the author makes Queen Victoria's attitude to the Germans somewhat inconsistent. Also he quotes without comment Matthew Arnold's rather unfair description of the position which the middle classes took toward the Federals in the American Civil War (p. 270). But it would be ungracious to dwell further on minor details in such a charming book.—ARTHUR LYON CROSS, University of Michigan.

The Struggle for the Rhine, by Hermann Stegemann (New York, Alfred A. Knopf, Inc., 1927; 432 pp.), translated from an abridged edition of an original German work, is ostensibly a work of interpretation rather than of research. The thesis is simply expressed: "Possession of the Rhine enables—and has invariably enabled—a conqueror from the South or West to control the entire Central European zone and therefore to dominate Europe; whereas the inhabitants of its right bank need the Rhine to maintain their independence." In other words the French struggle for the Rhine is an act of aggression, the German a laudable attempt of defence against this aggression. Control, incidentally, involves the whole basin. "To possess one-half of it involves an insoluble contradiction". The struggle for this control is traced from Ariovistus to the Treaty of Versailles. The author assures us that the end is not yet. The details of this history are not always made subordinate to the central thesis; one wonders if it was necessary to write so long a book to present a single idea.—THOMAS PEARDON, Columbia University.

In his *Introduction to Agricultural Economics* (New York, Thomas Y. Crowell Company, 1929; xix, 472 pp. $3.00) Fred R. Yoder sketches in an objective manner such economic problems as land, labor, social capital, credit, insurance, marketing, coöperative marketing, foreign markets, taxation, tariff, agrarian movements, the business cycle, the farm problem. In his concluding chapter Professor Yoder proposes the following remedies as a partial solution of the farm problem: more effectual control of production; economical land utilization; reduction of costs of production; organized coöperative efforts; equalization of the effects of protective policies; equitable distribution of tax burdens; education. Professor Yoder brings to his work a certain freshness and enthusiasm. He ranges widely over the great explored fields of economic knowledge, touching on such diverse topics as Malthus and the Farm Bloc, the Nullification Ordinance, Pooling, the Nonpartisan League,

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deflation and the Carey Act, the Grange and the Farmers' Alliance. Covering such a wide range of topics, the author has been forced to depend on the original researches of others. This debt he frankly acknowledges. If there are in America "schools of thought" in agricultural economics, then the author may be said to represent the Wisconsin school. His chief emphasis he puts on land, giving to this subject 110 pages, or almost one-fourth of the whole book. He deals with land as a factor of production, rent, land tenure and land policies. Under the last head he discusses the meaning and need of land policies in the United States at the present time; the historical policies of our government with the public domain; the land policies of Ireland, England, Wales, Denmark, Eastern Europe, Victoria Settlements, California Settlements; and various land-settlement ideas, including radical proposals for land reform. Coöperative marketing receives very full and detached treatment. The limitations of coöperation are pointed out as fully as are the possibilities of this method of doing business. The tariff, the author finds, has cost the farmer more than it has gained for him. The general effect of the tariff for the protection of infant industries, says Professor Yoder, so far as most farmers are concerned, is to leave them without any effective protection and to compel them to pay higher prices for many of the products they consume. He examines in particular the effects of the protective tariff on wool, sugar and cattle, and concludes that even in these fields the tariff has been a very unimportant influence. On the extremely controversial subject of price fixing he takes the ground common to most economists, namely, that price fixing without controlling production is futile. He favors government aid in marketing, but in a field quite distinct from price fixing or price tinkering. He says that governments can and do aid farmers in marketing by the following methods: official grades and standards; shipping-point inspection; market news service; investigation of foreign markets; help to farmers in organizing coöperatives; establishment of state and municipal bureaus of markets; better storage facilities, particularly through the licensed warehouses; more and cheaper credit through the Intermediate Credit Banks. The orderly marketing dogma receives some but not much recognition. "However", says Professor Yoder (p. 345), "since private middlemen have always engaged in storing and holding farm products and have effected orderly marketing among themselves, it must not be assumed that coöperatives can make great gains for farmers in

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taking over their functions". Professor Yoder has a style which is exceptionally clear and simple. His material is well selected and well organized, considering the present somewhat vague status of agricultural economics. For, as teachers of this subject know, in dividing the public problems of agriculture from the private problems of agriculture, there is a twilight zone of uncertainty.—JAMES E. BOYLE, Cornell University.

In contrast to many recent commentators upon the merits of democracy as a system of government, Seba Eldridge in a volume entitled *The New Citizenship* (New York, Thomas Y. Crowell Company, 1929; vii, 357 pp. $2.50) refuses to take the pessimistic outlook of what might be called the Lippmann school of political thought in regard to the capabilities of the voter. Neither does he accept the point of view of those whose chief concern is non-voting and whose major objective in political activity seems to be "getting out the vote". The crux of the problem of democracy as the author sees it is the quality, not the quantity, of the vote cast. In this he agrees with Mr. Lippmann. He does not agree with the distinguished publicist, however, in the conclusions to which the latter has come in a recent volume dealing with public opinion, to wit, that the rôle of the voter must be radically limited, for in the author's opinion Mr. Lippmann "has misconceived the nature of the public interest in public questions; underrated the ability of the public to judge those questions on their merits; exaggerated the importance of tests applicable by the public in the judgment of public controversies; and accepted a faulty etiological conception of the public with its unsound implications respecting the possibility of more competent publics in the future". Nevertheless, it is fully admitted that many of the defects of our existing political system have been correctly diagnosed by Mr. Lippmann. The task of political science as Professor Eldridge sees it consequently is that of improving the quality of the voter. And to the exposition of a tentative plan for the accomplishment of this object the major portion of the volume is devoted. The various agencies and institutions which might be utilized to this end are touched upon with varying degrees of enthusiasm. The kernel of Professor Eldridge's scheme, however, seems to be the establishment of primary, face-to-face discussion groups throughout the nation. Just how these are to be established—whether in conjunction with the adult education movement or the newer development in libraries now sponsored by the Carnegie Corporation—is seemingly a matter of indifference to the author and

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a program still to be worked out. In the concluding chapters of the monograph there takes place a discussion of the desirability of limiting the suffrage, but no very definite conclusions are reached. The essence of the proposal, however, lies in the scheme already referred to, designed as it is to produce a new citizenship. Whatever the reader may think of the details of the plan set forth by the author (and a conservative critic could find many to comment upon), whatever he may think of the originality of portions of the book (and Mr. Eldridge would probably be the last to claim that many of the suggestions contained therein were original with him), the author should nevertheless be commended for calling to the attention of his colleagues in political science once again an aspect of their subject which in the study of the law and structure of government is frequently overlooked—the problem of improving the quality of the voter.—SCHUYLER C. WALLACE, Columbia University.

In a little volume entitled *The Slum Problem* (London, Longmans, Green and Company, Ltd., 1928; 220 pp. $2.25), B. S. Townroe has set forth "some facts and figures likely to be helpful to those who are trying to deal with the problem". Although there is a chapter on America, the greater proportion of the monograph deals with the slum situation as it has developed in England, and analyzes in detail the attempts which have been made to remedy or ameliorate it. No roseate view of a Utopia easily attained is presented by Mr. Townroe, but rather a morass of difficulties and complexities to be waded through. Nevertheless, for the student of social affairs endeavoring to face reality, the facts here set forth should be of considerable interest and value.—SCHUYLER C. WALLACE, Columbia University.

In a volume entitled *Susan B. Anthony, The Woman Who Changed the Mind of a Nation* (New York, Frederick A. Stokes Company, 1928; xiii, 367 pp. $5.00) Rheta C. Dorr presents in a very charming manner indeed a picture of the grand old lady of the suffrage cause, tracing her career first as a school teacher at Canajoharie, then as a temperance worker and finally as a crusader in the field of woman's rights and a champion of universal suffrage. As a portrayal of the life of Miss Anthony the volume is excellent indeed, as a picture of the personal relationship existing between the leaders of the suffrage movement in the early years of that movement the analysis is exceedingly satisfactory, and as study in the technique of political reform Miss Dorr's work should receive only commendation. Like many another biographer, however, although recog-

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nizing the influence of social and economic forces and the contributions of other personalities, Miss Dorr has nevertheless credited her heroine, particularly in her subtitle, with perhaps a greater degree of influence in shaping the course of events than is in reality her due. It seems to this reviewer at least exceedingly unscientific to attribute to Miss Anthony or to any other single worker in the cause of reform complete credit for having "changed the mind of a nation." A plausible case certainly can be made for the contention that it was the industrial revolution rather than Miss Anthony which in last analysis was responsible for the final outcome of the suffrage crusade. Political power and economic power usually go hand in hand. It is probably no overstatement, consequently, to maintain that had another than a machine culture developed—with its myriad jobs within a woman's physical capacity, carrying with them as they do economic independence for women—Miss Anthony's message might have fallen on stony ground. This is not to be interpreted as meaning, however, that the force of Miss Anthony's personality or the philosophy she espoused were insignificant. It is merely intended to point out that Miss Dorr has, perhaps, failed to strike that balance between the force of individual personality and the force of events which should be the desideratum of all true biographers. Be that as it may, the picture here presented is admirably painted and well worth the scrutiny of both historians and political scientists.—SCHUYLER C. WALLACE, Columbia University.

The New World: Problems in Political Geography, by Isaiah Bowman (Fourth edition; Yonkers-on-Hudson, World Book Company, 1928; v, 803 pp. $4.75), needs no introduction to readers of this journal. The latest edition contains a thorough revision of the text and several new features, although the general plan is unchanged. There is an introductory chapter dealing with questions of a more than regional application such as disarmament, boundaries, minorities and mandates. The succeeding chapters, thirty-four in number, survey the different countries as in previous issues. The section on the United States, issued as a special supplement to the first edition, is here embodied as a chapter of the main work. Photographs are omitted from this edition, but many new and remarkable maps (there are 257 in all) appear. Three appendices deal with raw materials within the British Empire, war debts owing to the United States, and the principal treaties and agreements from 1814 to 1920. —T. P. PEARDON, Barnard College.

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